CHAPTER 34

CHARLOTTESVILLE ZONING CODE

MODULE 3 DRAFT

May 23, 2023

NOTE: Modifications to the draft text are ongoing based on legal review.

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ARTICLE 6.

ADMINISTRATION

Div. 6.1. Authority 6-3
6.1.1. Summary of Review Authority 6-3
6.1.2. City Council 6-5
6.1.3. Planning Commission 6-5
6.1.4. Board of Zoning Appeals 6-6
6.1.5. Board of Architectural Review 6-7
6.1.6. Zoning Administrator 6-8
6.1.7. Subdivision Administrator 6-10

Div. 6.2. Approval Processes 6-11
6.2.1. Common Review Procedures 6-11
6.2.2. Comprehensive Plan Adoption 6-14
6.2.3. Comprehensive Plan Amendment 6-15
6.2.4. Review of Public Facilities 6-17
6.2.5. Zoning Amendment 6-20
6.2.6. Minor Historic Review 6-25
6.2.7. Major Historic Review 6-28
6.2.8. Corridor Review 6-36
6.2.9. Development Plan 6-39
6.2.10. Minor Subdivision 6-42
6.2.11. Major Subdivision 6-44
6.2.12. Permit Review 6-49
6.2.13. Administrative Modification 6-51
6.2.14. Variance 6-52
6.2.15. Floodplain Variance 6-55
6.2.16. Special Use Permit 6-58
6.2.17. Critical Slopes Special Exception 6-61
6.2.18. Appeals to the Board of Zoning Appeals 6-63

Div. 6.3. Nonconformities 6-64
6.3.1. General 6-64
6.3.2. Nonconforming Lots 6-65
6.3.3. Nonconforming Buildings and Structures 6-66
6.3.4. Nonconforming Uses 6-71
6.3.5. Nonconforming Signs 6-72
6.3.6. Nonconformities in Floodplain Overlay Districts . . . 6-72

Div. 6.4. Enforcement 6-73
6.4.1. Authority 6-73
6.4.2. Compliance with Chapter 6-73
6.4.3. Inspections 6-73
6.4.4. Violations 6-73
6.4.5. Suspension of Time Limits During Litigation 6-78
6.4.6. Remedies and Penalties 6-78

DIV. 6.1. AUTHORITY

6.1.1. Summary of Review Authority

The following table summarizes the review and approval authority of various review bodies and officials that implement and administer this Code.

		REVIEW AND APPROVAL AUTHORITY						PUBLIC NOTICE			
APPROVAL PROCESSES		Zoning Administrator	Subdivision Administrator	Board of Architectural Review	Board of Zoning Appeals	Planning Commission	City Council	Mailed	Published	Posted	Website
Comprehensive Plan Review											
Comprehensive Plan Adoption	*Sec. XX.XX*	R				R-PH	D-PH		Y		Y
Comprehensive Plan Amendment	*Sec. XX.XX*	R				R-PH	D-PH		Y		
Review of Public Facilities	*Sec. XX.XX*	R				D	A				
Zoning Amendment	*Sec. XX.XX*										
Zoning Text Amendment		R				R-PH	D-PH		Y		
Zoning Map Amendment (Rezoning)											
1 to 25 parcels		R				R-PH	D-PH	Y	Y	Y	
More than 25 parcels		R				R-PH	D-PH		Y		
Historic Review											
Minor Historic Review	*Sec. XX.XX*	D		A							
Major Historic Review	*Sec. XX.XX*	R		D			A		Y	Y	
Corridor Review	*Sec. XX.XX*	D				A					
Development and Subdivision Review											
Development Plan	*Sec. XX.XX*	D				A					
Minor Subdivision	*Sec. XX.XX*		D			A					
Major Subdivision	*Sec. XX.XX*										
Preliminary Plat			R			D					
Final Plat			D			A					

KEY: R = Review / Recommend D = Final Decision -PH = Public Hearing -PM = Public Meeting A = Appeal
Y = Required Notice Y* = Required Notice for Appeals

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APPROVAL PROCESSES		REVIEW AND APPROVAL AUTHORITY						PUBLIC NOTICE			
		Zoning Administrator	Subdivision Administrator	Board of Architectural Review	Board of Zoning Appeals	Planning Commission	City Council	Mailed	Published	Posted	Website
Permit Review	*Sec. XX.XX*										
Tree Removal Permit		D			A-PH				Y*		
Floodplain Permit		D			A-PH				Y*		
Sign Permit		D			A-PH				Y*		
Temporary Use Permit		D			A-PH				Y*		
Relief											
Administrative Modification	*Sec. XX.XX*	D			A-PH			Y	Y*		
Variance	*Sec. XX.XX*	R			D-PH			Y	Y	Y	
Floodplain Variance	*Sec. XX.XX*	R			D-PH			Y	Y	Y	
Special Use Permit	*Sec. XX.XX*	R				R-PH	D-PH	Y	Y	Y	
Critical Slopes Special Exception	*Sec. XX.XX*	R				R-PM	D-PM	Y			Y

KEY: R = Review / Recommend D = Final Decision -PH = Public Hearing -PM = Public Meeting A = Appeal
Y = Required Notice Y* = Required Notice for Appeals

6.1.2. City Council

A. General

The City Council is established as authorized in *Code of Virginia* and the *Code of the City of Charlottesville, Chapter 2 - Administration*, and has the following powers and duties under this Code.

B. Approval Authority

The City Council is responsible for final action regarding:

1. Comprehensive Plan adoption and amendments;
2. Text amendments to this Code;
3. Map amendments to the official zoning map (rezoning);
4. Special Use Permits;
5. Critical Slopes Special Exceptions; and
6. Appeals regarding Review of Public Facilities and Certificates of Appropriateness under Major Historic Review.

6.1.3. Planning Commission

A. General

The Planning Commission is established as authorized in *Code of Virginia* and the *Code of the City of Charlottesville, Chapter 2 - Administration*, and has the following powers and duties under this Code.

B. Authority

1. Review Authority

The Planning Commission is responsible for review and recommendation regarding:

a. Comprehensive Plan adoption and amendments;

b. Text amendments to this Code;

c. Map amendments to the official zoning map (rezoning);

d. Special Use Permits; and

e. Critical Slopes Special Exceptions.

2. Approval Authority

The Planning Commission is responsible for final action regarding:

a. Review of Public Facilities;

b. Preliminary Plats; and

c. Appeals regarding Certificates of Appropriateness under Corridor Review, Development Plans, and Final Plats.

6.1.4. Board of Zoning Appeals

A. General

The Board of Zoning Appeals is established as authorized in *Code of Virginia* and has the following powers and duties under this Code.

B. Composition

1. The Board of Zoning Appeals must consist of 5 residents of the City, appointed by the Circuit Court of the City. Their terms of office is for 5 years each, and the term of office of 1 member will expire each year. The secretary of the Board must notify the Circuit Court at least 30 days in advance of the expiration of any term of office, and must notify the Court promptly if any vacancy occurs. Appointments to fill vacancies on the Board is only for the unexpired portion of the term. Members may be reappointed to succeed themselves.
2. A member whose term expires must continue to serve until their successor is appointed and qualifies. Any member of the Board may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by the Circuit Court, after a hearing is held after at least 15 days notice.
3. Up to 3 alternate members to the Board of Zoning Appeals may be appointed by the Circuit Court. The qualifications, terms and compensation of alternate members must be the same as those of regular members. A regular member, when they know they will be absent from a meeting, must notify the chair 24 hours prior to such meeting. The chair will select an alternate to serve in the absent member's place and the records of the Board must so note.
4. Members of the Board of Zoning Appeals cannot hold other public office in the City, except that 1 may be a member of the City Planning Commission.

C. Rules of Procedures

1. The Board of Zoning Appeals will establish its own rules of procedure.
2. The rules of procedure must at minimum provide for selection of officers of the Board, responsibilities of Board members, order for the conduct of quasi-judicial public hearings and times for filing appeals and holding public hearings.
3. The rules, regulations, minutes and actions of the Board must be maintained by the Zoning Administrator and are public records.

D. Approval Authority

The Board of Zoning Appeals is responsible for final action regarding:

1. Variances;
2. Floodplain Variances;

3. Appeals regarding Tree Removal Permits, Floodplain Permits, Sign Permits, Temporary Use Permits and Administrative Modifications.

6.1.5. Board of Architectural Review

A. General

The Board of Architectural Review has the following powers and duties under this Code.

B. Composition

1. The Board of Architectural Review (BAR) must be composed of 9 members.
2. Appointments to the BAR will be made by City Council, in the Council's discretion, for terms of 4 years, except that appointments to fill vacancies is for the unexpired remainder of the vacant term.
3. A member cannot serve for more than 2 consecutive 4-year terms, except for the members initially appointed to fill vacancies, who may serve for 2 full terms in addition to the vacant term to which they were originally appointed.
4. All appointees must be residents of the City; except that a person who resides outside the City, but who owns a business, or who owns commercial or residential property in a Design Control District, may be appointed to serve on the BAR.
5. The BAR must at least consist of the following members:
    a. 2 licensed architects;
    b. 1 member of the City's Planning Commission;
    c. 2 owners of a business or commercial property in a Design Control District;
    d. 1 owner of residential property or a resident in a Design Control District;
    e. 1 landscape architect or a licensed professional contractor; and
    f. 2 historians or persons with substantial background in history or historic preservation.

C. Authority

1. General

a. In order to administer the provisions of the Historical Preservation and Architectural Design Control Overlay Districts the Board of Architecture Review (BAR) must:
    i. Recommend additional surveys of potential districts or properties, and recommend properties for inclusion in or deletion from Major Design Control Districts or the City's list of Protected Properties.
    ii. Act in an advisory role to City Council and City Departments, Boards and Commissions.
    iii. Disseminate information within the City on historic preservation issues and concerns.

iv. Develop a Preservation Plan with goals and recommendations for consideration by the Planning Commission, and from time to time the Board will update such plan.

v. Develop and recommend to the City Council for its approval Design Guidelines for the City's Architectural Design Control Districts, consistent with the purposes and standards set forth within *Sec. XX, Overlay Districts*. The BAR must develop the Design Guidelines in consultation with the City's Urban Design Committee and after seeking input from business and property owners in the various districts. Guidelines developed by the BAR will become effective upon approval by City Council and thereafter will have the status of interpretive regulations. The BAR must undertake a comprehensive review and update the Design Guidelines at least once every 5 years.

b. In order to administer the provisions of the Historical Conservation District the BAR must:

i. Recommend surveys of potential Historic Conservation Districts, and recommend properties for inclusion in, or deletion from, Historic Conservation Districts.

ii. Develop and recommend to the City Council for Council's approval Design Guidelines for the City's Historic Conservation Districts, consistent with the purposes and standards set forth within *Sec. XX, Overlay Districts*. Design Guidelines will have the status of interpretive regulations. The BAR must undertake a comprehensive review and update the Design Guidelines at least once every 5 years.

2. Approval Authority

The Board of Zoning Appeals is responsible for final action regarding:

a. Certificates of Appropriateness under Major Historic Review; and

b. Appeals regarding Certificates of Appropriateness under Minor Historic Review.

6.1.6. Zoning Administrator

A. General

1. The Zoning Administrator serves as the administrator of this Code unless otherwise stated.
2. The Director of Neighborhood Development Services is designated as the Zoning Administrator.
3. The Zoning Administrator may designate any other city official or staff member as their designee in any function assigned by this Code to the Zoning Administrator. The Zoning Administrator remains responsible for any action taken by their designee.

B. Authority

1. General

The functions and duties of the Zoning Administrator under this Code include:

a. Administration of this Code and the zoning map;

b. Delegation of any act authorized by this Code to be carried out by the Zoning Administrator to an appropriate designee;

c. Enforcement of the provisions of this Code;

d. In specific cases, making findings of fact and, with the concurrence of the city attorney, conclusions of law regarding determinations of rights accruing under *Code of Virginia § 15.2-2307;* and

e. Provision of expertise and technical assistance to the City Council, Planning Commission, Board of Zoning Appeals and the Board of Architectural Review.

2. Review Authority

The Zoning Administrator is responsible for review and recommendation regarding:

a. Comprehensive Plan adoption and amendments;

b. Review of Public Facilities;

c. Text amendments to this Code;

d. Map amendments to the official zoning map (rezoning);

e. Certificates of Appropriateness under Major Historic Review;

f. Variances;

g. Floodplain Variances;

h. Special Use Permits; and

i. Critical Slope Special Exceptions.

3. Approval Authority

The Zoning Administrator is responsible for final action regarding:

a. Certificates of Appropriateness under Minor Historic Review;

b. Certificates of Appropriateness under Corridor Review;

c. Development Plans;

d. Tree Removal Permits;

e. Floodplain Permits;

f. Sign Permits;

g. Temporary Use Permits; and

h. Administrative Modifications.

6.1.7. Subdivision Administrator

A. General

1. The Subdivision Administrator serves as the administrator of provisions of this Code pertaining to the subdivision of land, including Minor Subdivision (*Sec. XX, Minor Subdivision*) or Major Subdivision (*Sec. XX, Major Subdivision*).
2. The Director of Neighborhood Development Services is designated as the Subdivision Administrator.
3. The Subdivision Administrator may designate any other city official or staff member as their designee in any function assigned by this Code to the Subdivision Administrator. The Subdivision Administrator remains responsible for any action taken by their designee.

B. Authority

1. General

The functions and duties of the Subdivision Administrator under this Code include:

a. Administration of provisions of this Code pertaining to the subdivision of land;

b. Delegation of any act authorized by this Code to be carried out by the Subdivision Administrator to an appropriate designee;

c. Enforcement of the provisions of this Code pertaining to the subdivision of land; and

d. Provision of expertise and technical assistance to the Planning Commission.

2. Review Authority

The Subdivision Administrator is responsible for review and recommendation regarding Preliminary Plats.

3. Approval Authority

4. The Subdivision Administrator is responsible for final action regarding:

a. Minor Subdivision; and

b. Final Plats.

DIV. 6.2. APPROVAL PROCESSES

6.2.1. Common Review Procedures

A. Applicability

The following requirements are common to the procedures contained in the Zoning Code and apply to applications submitted under this Article. Additional details may be included for each specific procedure.

B. Code of Virginia Compliance

This Article is intended to comply with the provisions of *Code of Virginia § 15.2-2280 et seq.*, pertaining to zoning decisions. Where any provision of this Article is in conflict with any provision of State law, the State law controls. Where this Article fails to fully incorporate a provision required by State law, the provision of State law must be fully complied with.

C. Application Requirements

1. Application Submittal

a. All applications must be filed with Neighborhood Development Services and must be submitted on forms and in such numbers as required by the Zoning Administrator, who will route the materials to the appropriate review bodies.

b. Application forms can be found on the City's website (*www.charlottesville.gov*).

2. Fee Schedule

a. The current fee schedule is available on the City's website and kept on file at the Neighborhood Development Services offices. Fees are updated and adopted by the City Council.

b. All filing fees must be paid in full for an application to be considered complete.

c. A fee is not required if the application is made by the City or any agency created and appointed by the City Council to perform governmental functions.

3. Completeness Determination

a. All applications must be complete before the City is required to review the application. Once an application is received, the Zoning Administrator has 10 days to review and determine the completeness of an application. An applicant will be notified of an incomplete application, and the application will not proceed for review or decision.

b. An application is considered complete when it contains all of the information necessary to decide whether or not the application will comply with all of the applicable requirements of the Zoning Code.

c. The presumption is that all of the information required by the City's application forms is necessary to satisfy the requirements of this Article. However, it is recognized that each application is unique, and more or less information may be required according to the specifics of a particular project. The applicant may rely on the Zoning Administrator to determine whether more or less information must be submitted for the application to be considered complete and ready for review.

4. Application Deadline

Complete applications must be submitted in accordance with the City's published schedule. Schedules indicating submittal dates are developed each year and made available on the City's website and kept on file at the Neighborhood Development Services offices.

5. Revised Application Materials

a. All revised application materials must be submitted to Neighborhood Development Services, who will route the materials to the appropriate review bodies. No plans may be sent directly to the Planning Commission, Board of Zoning Appeals, Board of Architectural Review, Mayor, or City Council.

b. No revised application materials may be submitted to Neighborhood Development Services less than 20 days prior to a scheduled public meeting or public hearing.

6. Withdrawal of an Application

a. Any application may be withdrawn at any time at the discretion of the applicant by providing written notice to the Zoning Administrator.

b. No portion of a required application fee will be refunded on any withdrawn application.

c. For applications for Legislative Review, if a public hearing has been advertised, the withdrawn application will be announced at the hearing.

D. Public Notice and Hearing Requirements

Public notice is required for certain procedures by the *Code of Virginia § 15.2-2200 et seq*. For public notice, meeting, and hearing requirements applicable to each procedure, see *Sec. XX, Summary of Review Authority*. The City may chose to provide additional notice as a courtesy, but is not required to do so.

The fact that a notice is not received due to an error that was not the fault of the City does not prevent the public hearing from happening, change any decision made at the public meeting or hearing, or prevent the application from continuing to move forward through the review process.

1. Mailed Notice

a. Where a mailed notice is required, the City will notify by mail all owners and occupants of property included in the proposed application and all owners and occupants of properties abutting and immediately across the street or road the property subject to the application. Notices must be mailed at least 5 days before the public hearing.

b. For Zoning Map Amendments, mailed notice must be registered or certified mail.

c. For all other applications, mailed notice can be first class mail.

2. Published Notice

Where a published notice is required, the Zoning Administrator must publish a notice of the public hearing in the newspaper of general circulation once a week for two successive weeks in the same newspaper, with at least 6 days between the first and second publication. The second notice must be published at least 5 days, but no more than 21 calendar days, before the public hearing.

3. Posted Notice

Where a posted notice is required, a sign must be posted on the property within 10 feet of the edge of the nearest street right-of-way. In the case of multiple parcels, sufficient signs must be posted to provide reasonable notice to interested persons. Signs must be posted at least 7 days prior to the date of the public hearing.

E. Contents of Notice

Required notice of a public hearing must provide at least the following, according to the *Code of Virginia § 15.2-2200 et seq.*:

1. A case number;
2. The address of the subject property;
3. The general location of the land that is the subject of the application, which may include a location map;
4. A description of the action requested;
5. The time, date, and location of the public hearing or meeting;
6. A phone number and e-mail address to contact Neighborhood Development Services;
7. The web address for Neighborhood Development Services;
8. A location where the application materials can be reviewed; and
9. A statement that the interested parties may appear at the public hearing or meeting.

6.2.2. Comprehensive Plan Adoption

A. Applicability

Applies to the adoption of a new Comprehensive Plan.

B. Requirements

In accordance with the requirements of Title 15.2, Chapter 22, Article 3 of the *Code of Virginia* the Planning Commission must prepare a Comprehensive Plan for the physical development of the City, Plan amendments and review the Plan at least every 5 years.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the Plan and will provide a staff report to Planning Commission in advance of the public hearing. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice of a public hearing must be given in accordance with *Sec. XX. Common Review Procedures.*

c. The Comprehensive Plan will be posted on a website accessible to the public. See *Code of Virginia, § 15.2-2225 and § 15.2-2226.*

2. Planning Commission Review

a. Prior to making any recommendation to the City Council, the Planning Commission must advertise and hold a public hearing on a proposed Comprehensive Plan.

b. The Planning Commission will make a report to the City Council recommending to approve, amend and approve, or deny the Plan.

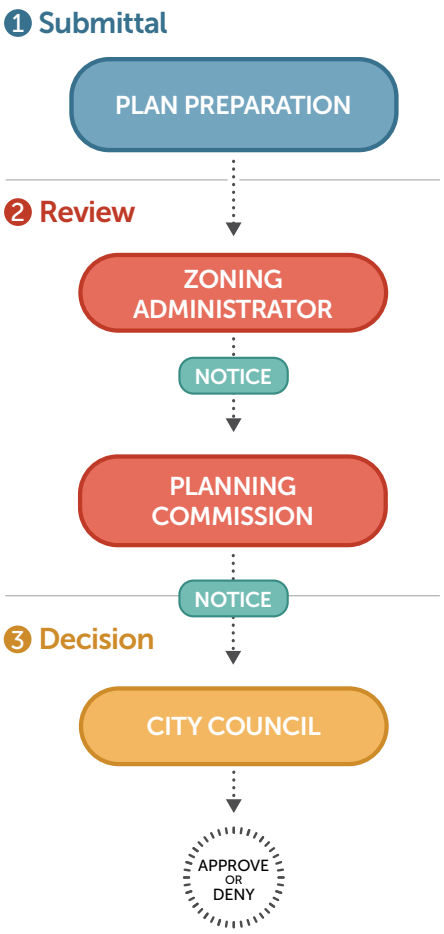
3. City Council Decision

a. The City Council must advertise and hold a public hearing on a proposed Comprehensive Plan.

b. The City Council will either approve and adopt, amend and adopt, or deny the Plan.

c. If the Council denies the Plan, it will return it to the Planning Commission for reconsideration with its reasons for denial, according to the *Code of Virginia § 15.2-2227.*

6.2.3. Comprehensive Plan Amendment



A. Applicability

Applies to amendments to the current Comprehensive Plan.

B. Amendment Initiation

1. At least once every 5 years the Planning Commission must review the Comprehensive Plan to determine whether it would be advisable to amend the Plan.
2. An amendment of the Comprehensive Plan may be initiated at any time by the Planning Commission, City Council, or any person.

C. Application Requirements

1. Pre-Application Conference

Before submitting an application for a Comprehensive Plan Amendment, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Submitting an Application

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

D. Review and Decision Process

Amendments to the Comprehensive Plan must be recommended, approved and adopted, respectively, in accordance with the requirements set forth within Title 15.2, Chapter 22, *Article 3 of the Code of Virginia*.

1. Administrative Review

a. The Zoning Administrator will review the amendment and will provide a staff report to Planning Commission in advance of the public hearing. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice of a public hearing must be advertised as required by *Code of Virginia § 15.2-2204*.

2. Planning Commission Review

a. If the City Council initiates an amendment, the Planning Commission must submit the amendment to public hearing within 60 days or such longer time frame as may be specified after written request by the City Council.

b. The Planning Commission will make a report to the City Council recommending that Council approve, deny, or modify the amendment.

3. City Council Decision

a. If the Planning Commission fails to make a recommendation on the amendment within the 60 day time frame, the City Council may conduct a public hearing.

b. The City Council may hold a joint public hearing with the Planning Commission.

c. In considering any amendments to the Plan for 25 parcels or less, the City Council must act within 90 days of the Planning Commission's resolution.

d. In considering any amendments to the Plan for more than 25 parcels, the City Council must act within 150 days of the Planning Commission resolution.

e. The City Council will either approve and adopt, amend and adopt, or deny the amendment.

6.2.4. Review of Public Facilities

A. Applicability

1. Review of Public Facilities applies to the following projects:

   a. The construction, establishment, or authorization of a public facility.

   b. The widening, narrowing, extension, enlargement, vacation, or change of use of streets or public land and other public areas shown on the Comprehensive Plan.

2. Public Uses and Facilities Definition

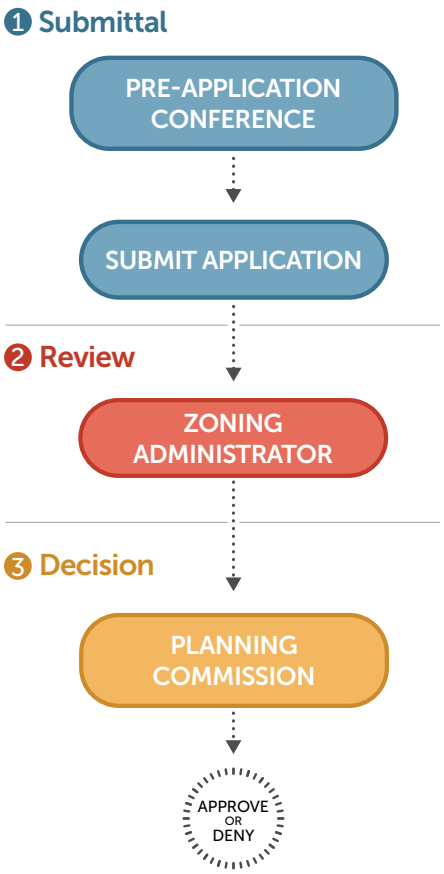
   a. Public facilities, structures and uses include, but are not limited to: any street, connection to an existing street, park or other public land or public area, public building or public structure, and any public utility facility or public service corporation facility, whether publicly or privately owned. The term does not include any office facility of any of the foregoing.

   b. Public facilities, structures and uses do not include the following: railroad facilities, high power electrical transmission lines which are subject to review and approval by the Virginia State Corporation Commission, or any office facility of any of the foregoing.

3. Exemptions

   a. Paving, repair, reconstruction, improvement, drainage or similar work, and normal service extensions of public utilities or public service corporations, does not require review and approval pursuant to this Section unless involving a change in the location or extent of a street or public area.

   b. Any public facility that is identified within, but not the entire subject of, a submission for approval of a Subdivision or Site Plan, may be deemed a feature already shown on the adopted comprehensive plan, and therefore, excepted from the requirement for submittal to and approval by the Planning Commission, provided that the City Council has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public facility or has approved it through acceptance of a proffer approved in connection with a rezoning application.



c. Approval and funding of a public telecommunications facility by the Virginia Public Broadcasting Board are deemed to satisfy the requirements of this Section, with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this Paragraph does not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990.

4. In the event of any conflict between the provisions set forth within this Section and those within *Code of Virginia, § 15.2-2232*, the state code provisions will prevail.

B. Application Requirements

1. Pre-Application Conference

Before submitting an application for Review of Public Facilities, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Submitting an Application

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the application and will provide a staff report to Planning Commission. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

2. Planning Commission Decision

a. Planning Commission will approve, approve with conditions, or deny the application.

b. Failure of the Planning Commission to act within 60 days of a submission, or 90 days in the case of a telecommunications facility, unless the time is extended by action of the City Council, will be deemed approval.

c. On any application for a telecommunications facility, the Planning Commission's failure to act on such application within 90 days will be deemed approval unless the time is extended by action of City Council. City council may extend the time required for action by the Planning Commission by no more than 60 additional days. If the Planning Commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the Planning Commission.

D. Criteria for Review and Decision

General or approximate location, character and extent of public facilities must be approved by the Planning Commission as being substantially in accord with the adopted Comprehensive Plan.

E. Action After the Decision

1. City Council Decision

The Planning Commission will communicate its findings to the City Council, indicating its approval or denial with written reasons. City Council may overrule the action of the Planning Commission by a majority vote.

2. Appeal of Planning Commission Decision

a. The owner or their agent may appeal the decision of the Planning Commission to the City Council within 10 days after the Commission's final decision. The appeal must be by written petition to the City Council, and set forth the specific reasons for the appeal.

b. On appeal, the City Council will hear and make a final determination upon the application within 60 days of the date on which the appeal was filed with the Clerk of Council.

6.2.5. Zoning Amendment

A. Applicability

1. Zoning Amendment is required for the following:

   a. **Zoning Text Amendment.** Applies to a request to amend the text of this Code.

   b. **Zoning Map Amendment (Rezoning).** Applies to a request to amend the zoning map from one zoning district to another, or to change the boundaries of an existing zoning district, including overlay districts.

B. Amendment Initiation

1. A Zoning Text Amendment may be initiated by the City Council or Planning Commission.

2. A Zoning Map Amendment may be initiated by:

   a. The City Council;

   b. The Planning Commission; or

   c. Any person who is the owner, owner's agent, or contract purchaser of property with the owner's written consent, where such amendment proposes a change of the zoning district classification of such property.

C. Application Requirements

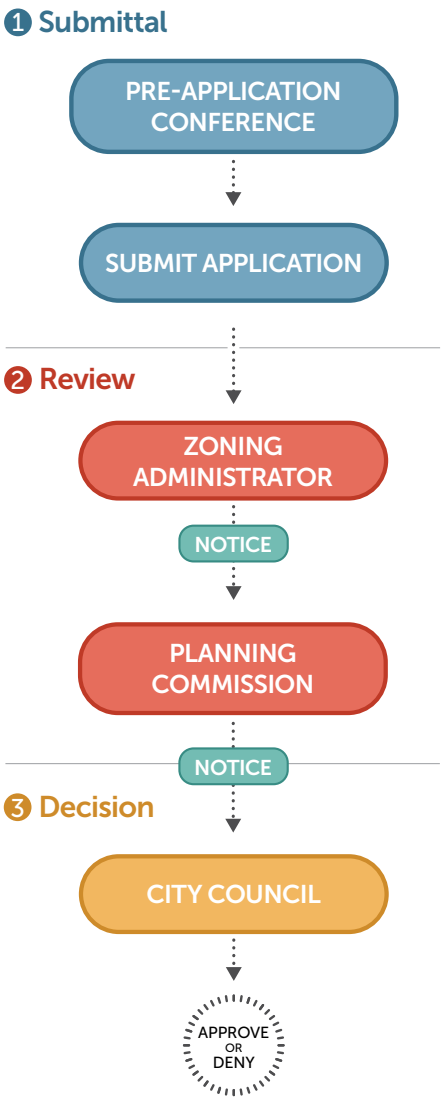
1. Zoning Map Amendment

a. Pre-Application Conference

Before submitting an application for a Zoning Map Amendment, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. Submitting an Application

Following the pre-application conference, an applicant may start the application process. To begin, a completed application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.



2. Additional Requirements Conditional Zoning

a. Preliminary proffers may be submitted as part of the original Zoning Map Amendment application, or may be submitted, as a modification of an existing Zoning Map Amendment application, no fewer than 12 days prior to the scheduled public hearing.

D. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the amendment and will provide a staff report and recommendation to Planning Commission in advance of the public hearing. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice

i. For a Zoning Text Amendment, notice of the public hearing must be given in accordance with *Sec. XX. Common Review Procedures*.

ii. For a Zoning Map Amendment that involves a change in the zoning map classification of 25 or fewer parcels of land, notice of the public hearing must be given in accordance with *Sec. XX. Common Review Procedures.*

iii. For a Zoning Map Amendment that involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, notice of the public hearing must be given in accordance with *Sec. XX. Common Review Procedures.* Mailed notice is only required to the owners of the property included in the proposed application.

2. Planning Commission Review

a. Prior to making any recommendation to the City Council, the Planning Commission must advertise and hold at least 1 public hearing on a proposed amendment. The Planning Commission may hold a joint public hearing with the City Council.

b. The Planning Commission must review the proposed amendment and report its findings and recommendations to the City Council, along with any appropriate explanatory materials, within 100 days after the proposed amendment was referred to the Planning Commission for review.

c. Owner-initiated applications for Zoning Map Amendments are deemed referred to the Planning Commission as of the date on which:

i. City Council, by motion or by resolution, refers an amendment to the Planning Commission for review; or

ii. The first Planning Commission meeting following referral by the Zoning Administrator. Failure by the Commission to report to City Council within the 100-day period is deemed a recommendation of approval, unless the application is withdrawn.

d. Planning Commission Review for Conditional Zoning

i. Where proffers are made for the first time at the public hearing, or are substantially modified at the hearing, the application will be continued by the Planning Commission to allow for review by Zoning Administrator, and to allow an opportunity for public comment on the new components of the application.

ii. If the Planning Commission takes final action on a Zoning Map Amendment application that includes proffered conditions, then the applicant must compile all proffers, as acted upon by the Planning Commission, to a final written proffer statement. The final proffer statement must be submitted to the Zoning Administrator within 7 days following the Planning Commission meeting. The Zoning Administrator will transmit the final proffer statement to City Council for consideration along with the Zoning Map Amendment application.

iii. During a joint public hearing of the Planning Commission with City Council, preliminary proffers may be modified by an applicant if they do not materially affect the overall proposal.

3. City Council Decision

a. Before enacting any proposed amendment to the zoning ordinance, the City Council must advertise and hold at least 1 public hearing. The City Council may hold a joint public hearing with the Planning Commission.

b. Council may make appropriate changes or corrections in the proposed amendment as a result of the public hearing; provided, however, that no land may be rezoned to a more intensive use classification than was identified in the public notice of the public hearing without an additional public hearing conducted after notice as required by law. Where substantial changes have been made to a Zoning Map Amendment application following a public hearing, the City Council may hold an additional public hearing or refer the application back to the Planning Commission.

c. The City Council will either approve and adopt, amend and adopt, or deny the amendment.

d. City Council Decision for Conditional Zoning

An applicant may seek to add to, expand, clarify or otherwise modify the proffers acted upon by the Planning Commission prior to the meeting at which the City Council will consider the Zoning Map Amendment application of which the proffers are a part. In the event any such modification is proposed, the applicant will prepare the final proffer statement as required by *this Section*, as well as a cover sheet listing the proposed modifications. If a modification is proposed, Council will take one of the following actions:

i. Council may decline to consider the modifications, and may proceed to consider the Zoning Map Amendment application and final proffer statement, as acted upon by the Planning Commission;

ii. Council may continue the application to a subsequent meeting date, in which case Council will conduct an additional public hearing on the application including the final proffer statement and all proposed modifications, following advertisement and notice as required by law; or

iii. Council may refer the modified application to the Planning Commission for review and recommendation, upon an additional public hearing of the modification, including the final proffer statement and all proposed modifications, following advertisement and notice as required by law. Council will re-refer the modified application to the Planning Commission if the proposed modification is to delete any substantive provision from any proffer that was reviewed and acted upon by the Planning Commission.

E. Criteria for Review and Decision

The Planning Commission will review and study each proposed amendment to determine:

1. Whether the proposed amendment conforms to the general guidelines and policies contained in the Comprehensive Plan;
2. Whether the proposed amendment will further the purposes of this Chapter and public necessity, convenience, general welfare, and good zoning practice require such amendment;
3. Whether there is a need and justification for the change;
4. When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the Planning Commission must consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification; and
5. Such other considerations as permitted by law.

F. Action After the Decision

1. New Applications

Once an application seeking a map amendment of the zoning ordinance has been advertised for a public hearing, the City Council cannot consider another application which is substantially the same as that advertised for a period of 1 year from the date the advertised application was accepted by the Zoning Administrator.

2. Action After Approval for Conditional Zoning

a. Once adopted as part of a zoning map amendment, proffered conditions become a part of the zoning regulations applicable to the property and continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance. Upon adoption, the existence of proffered conditions must be noted by an appropriate symbol on the City's zoning district map.

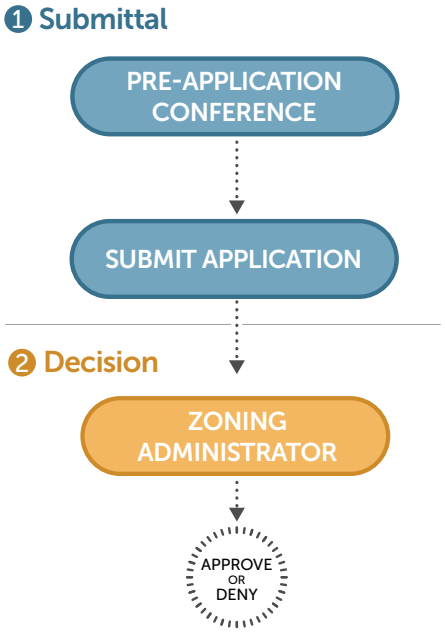
b. So long as any proffered conditions remain in effect a city official or agency cannot approve any Subdivision Plat or Development Plan, unless such plat or plan substantially conforms with all proffered conditions applicable to property which is the subject of the plat or plan.

c. The Zoning Administrator must keep and make available for public inspection a conditional zoning index. The index must provide ready access to the ordinance adopting the proffered conditions.

d. Any application initiated by an owner, contract purchaser with the owner's consent, or owner's agent seeking to amend conditions that were voluntarily proffered and accepted by the City Council must be advertised and reviewed by the process set forth above for a new conditional zoning.

e. This Section cannot be construed to affect or impair the authority of City Council to accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements or accept or impose valid conditions permitted under the *Code of Virginia § 15.2-2303.*

6.2.6. Minor Historic Review



A. Applicability

1. A Minor Historic Review is required for activities described in this Section on any property located in a Major Architectural Design Control (ADC) District, Historic Conservation District, and for a Individually Protected Property (IPP).

2. Major Architectural Design Control District and Individually Protected Property

In an ADC District and for an IPP, Minor Historic Review for a Certificate of Appropriateness is required for the following modifications:

a. Exterior alterations which are shown, through adequate documentation, to have been approved for a tax credit under either the federal rehabilitation tax credit program or the similar Virginia state tax credit program;

b. The repainting of an existing building or structure in a different color;

c. The addition or deletion of awnings, canopies, storm windows, storm doors, gutters, and similar appurtenances;

d. The addition, alteration, or removal of any sign where such sign is the sole subject of the application, or where all other improvements comprising part of the application are subject review under *this Section*; and

e. Structural changes to a building or structure which do not require issuance of a building permit under the Uniform Statewide Building Code except for the following, which must be reviewed by the Board of Architectural Review (BAR): replacement if not in-kind of roof coverings and installation or replacement if not in-kind of siding on any buildings or structures, and replacement of windows and doors on any buildings or structures.

3. Historic Conservation District

a. In a Historic Conservation District, Minor Historic Review for a Certificate of Appropriateness is required for all new fences and walls that abut a street, or which are located in a side yard between a street and the front of the principal structure on a lot.

b. The Zoning Administrator can approve Certificates of Appropriateness through Minor Historic Review for the following:

i. Applications that have previously been reviewed by the BAR, if the BAR has authorized final review by the Zoning Administrator;

ii. Applications for minor accessory buildings or additions, or minor alterations after consultation with the chair of the BAR.

B. Application Requirements

1. Application Initiation

An application for Minor Historic Review may be initiated by a property owner, contract purchaser, or lessee of the property, or by the authorized agent of any such person.

2. Pre-Application Conference

a. Before submitting an application for Minor Historic Review, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. At the pre-application conference, the Zoning Administrator will determine if the application qualifies as a Minor Historic Review. If the Administrator determines the application requires Major Historic Review, the application will be processed according to the procedures in *Sec. XX, Major Historic Review*.

3. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Decision

a. The Zoning Administrator is authorized to approve requests for a Certificate of Appropriateness.

b. In reviewing an application for a Certificate of Appropriateness, the Zoning Administrator is deemed the agent of the BAR and must apply the same criteria and design guidelines that the BAR must use in its review process.

c. Failure of the Zoning Administrator to approve or deny an application within 10 days from the date the application was submitted will be deemed approval of the application.

d. Upon approval of an application, the Zoning Administrator will issue the approved certificate. If the application is denied, the Zoning Administrator will mail or hand-deliver written notice of this decision to the applicant, including the specific reasons for the denial, with reference to specific ordinances, laws or regulations.

e. The Zoning Administrator will inform the BAR of their administrative decisions at the next regular meeting following the date of such decision.

D. Action After the Decision

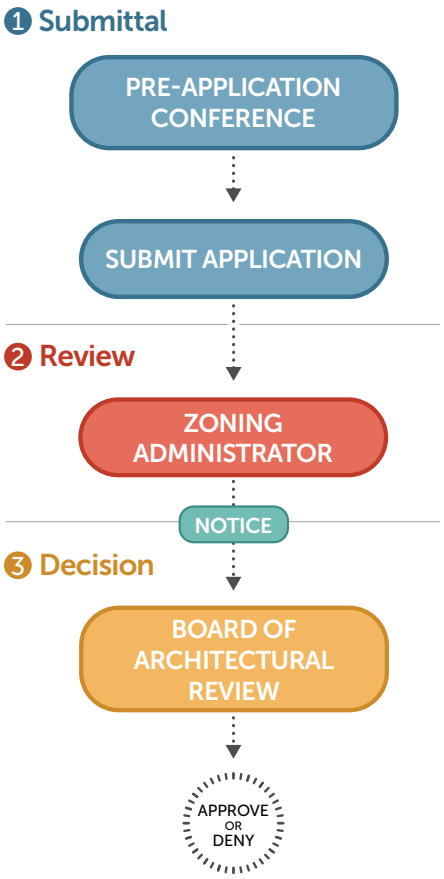
1. Appeal of Decision

a. Following a decision of the Zoning Administrator upon an application, the applicant, or any other aggrieved party, will have 10 days from the date of the decision to appeal that decision to the BAR.

b. In considering an appeal of a decision of the Zoning Administrator, the BAR will review the application as if the application had come before it in the first instance. In an appeal the BAR may consider any information or opinions relevant to the application, including, but not limited to, those provided by the Zoning Administrator.

c. Appeals of administrative decisions must follow the procedures in *Sec. XX, Major Historic Review*.

6.2.7. Major Historic Review



A. Applicability

1. Major Historic Review is required for activities described in this Section on any property located in a Major Architectural Design Control (ADC) District, Individually Protected Property (IPP) and Historic Conservation District.

2. Major Architectural Design Control District and Individually Protected Property

In an ADC District and for a IPP, Major Historic Review for a Certificate of Appropriateness is required for the following activities:

a. Construction, reconstruction, alteration, or restoration of a building or structure.

b. A vendor stand located or operated within a Major Design Control District.

c. Relocation, removal, encapsulation, or demolition in whole or in part of a contributing structure in an ADC District or an IPP.

3. Historic Conservation District

In a Historic Conservation District, Major Historic Review for a Certificate of Appropriateness is required for the following activities:

a. Construction, erection, alteration, or demolition of certain buildings, structures, or improvements, of new buildings and structures if they require a building permit, and unless they are concealed by the principal structure and are not visible all abutting streets.

b. Additions to existing buildings or structures that are:

i. Wholly or partially to the side or front of the principal structure on a lot;

ii. Located on a lot that abuts a street on the side or rear;

iii. Equal to or greater than 50 percent of the total gross floor area of the existing building; or

iv. Located to the rear and exceed the height or width of the existing building or structure.

c. Demolition, razing or moving of any building or structure when:

i. The building is a contributing structure; and

ii. The demolition is located in whole or in part to the front or side of the contributing structure; or

iii. The demolition is located on a lot that abuts a street on the side or rear; or

iv. The demolition is equal to or greater than 33 percent of the total gross floor area of the existing building.

d. The painting of previously unpainted brick or other masonry.

4. No Certificate of Appropriateness Required

a. The following activities do not require a Certificate of Appropriateness:

i. Interior features, details, alterations and improvements;

ii. Ordinary maintenance or repair of exterior elements or features;

iii. Painting or repainting a material other than unpainted brick or other masonry in a Historic Conservation District.

iv. Construction, reconstruction, alteration, repair, or other improvements to a building or structure made pursuant to an order of correction issued by the City Building Code Official, upon a determination that a building or structure is an "unsafe structure," as that term is defined by the State Building Code and Code of Virginia. In the event any such order or determination is issued with respect to a building or structure subject to BAR review, the Zoning Administrator will notify the BAR of any alterations or repairs ordered by the Building Code Official.

v. The demolition, razing or removing, in whole or in part, of any contributing structure allowed pursuant to an order of the City Building Code Official, upon a determination that a building or structure is in such dangerous, hazardous, or unsafe condition that it could reasonably be expected to cause death or serious injury before review under the provisions of *this Division*. Upon such a determination, the Building Code Official will deliver a copy of the order to the Zoning Administrator and to the chairperson of the BAR.

vi. Any project within the right-of-way.

B. Application Requirements

1. Application Initiation

An application for Major Historic Review may be initiated by a property owner, contract purchaser, or lessee of the property, or by the authorized agent of any such person.

2. Pre-Application Conference

a. Before submitting an application for a Certificate of Appropriateness, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. The applicant may request that the pre-application conference include the full Board of Architectural Review (BAR), or the chair of the BAR.

c. A pre-application conference with the entire BAR is mandatory for the following activities proposed within a Major Design Control District:

i. Development by the City of Charlottesville, or on land owned by the City;

ii. Development on property owned by the City that is being sold for private development;

iii. Development being financed in whole or in part by the City, or by a related governmental authority;

iv. Development having a projected construction cost of $350,000.00 or more; and,

v. Any other development deemed significant by the Zoning Administrator or the chair of the BAR, due to its size, location or potential impact on surrounding properties.

3. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the Certificate of Appropriateness application and will provide a staff report and recommendation to BAR in advance of the public meeting. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice of the application must be given in accordance with *Sec. XX, Common Review Procedures*.

2. Board of Architectural Review Decision

a. In considering a particular application the BAR will approve the application unless it finds:

i. That the proposal does not meet specific standards set forth within this Section or applicable provisions of the City's design guidelines; and

ii. The proposal is incompatible with the historic, cultural or architectural character of the district in which the property is located or the IPP that is the subject of the application.

b. The BAR will approve, approve with conditions, or deny applications for Certificates of Appropriateness in accordance with the provisions of this Section.

c. Major Architectural Design Control District and Individually Protected Property

i. Failure of the BAR to act on an application within 60 days after a complete submission will be deemed approval.

ii. The BAR, or City Council on appeal, may make such requirements for, and conditions of approval as are necessary or desirable to protect the safety of adjacent buildings, structures, or properties, and of any persons present thereon; and, in the case of a partial removal, encapsulation or demolition:

a) To protect the structural integrity of the portions of a building or structure which are to remain following the activity that is the subject of a building permit, or

b) To protect historic or architecturally significant features on the portions of a building or structure which are to remain following the activity that is the subject of a building permit.

d. Historic Conservation District

i. For a property in a Historic Conservation District, failure of the BAR to act on an application within 60 days after a complete submission will be deemed approval.

ii. The BAR, or City Council on appeal, may require conditions of approval as are necessary or desirable to ensure that any new construction or addition would be compatible with the scale and character of the Historic Conservation District. Prior to attaching conditions to an approval, due consideration will be given to the cost of compliance with the proposed conditions.

D. Criteria for Review and Decision

1. Major Architectural Design Control District and Individually Protected Property

a. In an ADC District and for a IPP, review of the proposed construction, reconstruction, alteration or restoration of a building or structure is limited to exterior architectural features, including signs, and the following features and factors:

i. Whether the material, texture, color, height, scale, mass, and placement of the proposed addition, modification or construction are visually and architecturally compatible with the site and the applicable Design Control District;

ii. The harmony of the proposed change in terms of overall proportion and the size and placement of entrances, windows, awnings, exterior stairs, and signs;

iii. The Secretary of the Interior Standards for Rehabilitation set forth within the Code of Federal Regulations (36 C.F.R. §67.7(b)), as may be relevant;

iv. The effect of the proposed change on the adjacent building or structures;

v. The impact of the proposed change on other protected features on the property, such as gardens, landscaping, fences, walls, and walks;

vi. Whether the proposed method of construction, renovation, or restoration could have an adverse impact on the structure or site, or adjacent buildings or structures;

vii. When reviewing any proposed sign as part of an application under consideration, the standards set forth within *Article IX, sections 34-1020*, et seq. will be applied; and

viii. Any applicable provisions of the city's design guidelines.

b. In an ADC and for a IPP, review is limited to following factors in determining whether or not to permit the moving, removing, encapsulation or demolition, in whole or in part, of a contributing structure or IPP:

i. The historic, architectural, or cultural significance, if any, of the specific structure or property, including, without limitation:

a) The age of the structure or property;

b) Whether it has been designated a National Historic Landmark, listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;

c) Whether, and to what extent, the building or structure is associated with an historic person, architect or master craftsman, or with an historic event;

d) Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the City of a particular architectural style or feature;

e) Whether the building or structure is of such old or distinctive design, texture, or material that it could not be reproduced, or could be reproduced only with great difficulty; and

f) The degree to which distinguishing characteristics, qualities, features, or materials remain;

ii. Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within an existing Major Design Control District, or is one of a group of properties within such a district whose concentration or continuity possesses greater significance than many of its component buildings and structures.

iii. The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant, or other information provided to the BAR;

iv. Whether, and to what extent, the applicant proposes means, methods or plans for moving, removing, or demolishing the structure or property that preserves portions, features, or materials that are significant to the property's historic, architectural, or cultural value; and

v. Any applicable provisions of the city's design guidelines.

2. Historic Conservation District

a. In a Historic Conservation District, review is limited to the following features and factors in determining the appropriateness of proposed new construction and additions to buildings or structures:

i. Whether the form, height, scale, mass, and placement of the proposed construction are visually and architecturally compatible with the site and the applicable Historic Conservation District;

ii. The harmony of the proposed changes in terms of overall proportion and the size and placement of entrances and windows;

iii. The impact of the proposed change on the essential architectural form and integrity of the existing building;

iv. The effect, with respect to architectural considerations, of the proposed change on the Historic Conservation District neighborhood;

v. Any applicable provisions of the City's Historic Conservation District design guidelines.

b. In a Historic Conservation District, review is limited to the following factors in determining whether or not to permit the demolition, razing, or moving, in whole or in part, of a contributing structure:

i. The historic, architectural, or cultural significance, if any, of the specific building or structure, including, without limitation:

a) The age of the building or structure;

b) Whether it has been listed on the National Register of Historic Places, or listed on the Virginia Landmarks Register;

c) Whether, and to what extent, the building or structure is associated with an historic person, architect, or master craftsman, or with an historic event;

d) Whether the building or structure, or any of its features, represent an infrequent or the first or last remaining example within the city of a particular architectural style or feature;

e) The degree to which distinguishing characteristics, qualities, features, or materials remain;

ii. Whether, and to what extent, a contributing structure is linked, historically or aesthetically, to other buildings or structures within the Historic Conservation District, and whether the proposed demolition would affect adversely or positively the historic or aesthetic character of the District;

iii. The overall condition and structural integrity of the building or structure, as indicated by studies prepared by a qualified professional engineer and provided by the applicant, or other information provided to the BAR;

iv. Whether, and to what extent, the applicant proposes to preserve portions, features, or materials that are significant to the property's historic, architectural, or cultural value; and

v. Any applicable provisions of the City's Historic Conservation District design guidelines.

E. Action After the Decision

1. Appeal of Decision

a. Following approval of an application by the BAR, the Zoning Administrator or any aggrieved person, may note an appeal of the BAR decision to the City Council, by filing a written notice of appeal within 10 days of the date of the decision. If no such appeal is noted, then, upon the expiration of the 10-day appeal period, the Zoning Administrator will issue the approved Certificate of Appropriateness.

b. If an application is denied or the applicant objects to the conditions of approval, the applicant will be provided written notice of the decision, including any conditions of approval. Following a denial or approval with conditions, the applicant, the Zoning Administrator, or any aggrieved person may appeal the decision to the City Council, by filing a written notice of appeal within 10 days of the date of the decision.

c. An applicant must set forth, in writing, the grounds for an appeal, including the procedures or standards alleged to have been violated or misapplied by the BAR, and any additional information, factors or opinions they deems relevant to the application. The applicant, or their agent, and any aggrieved person, will be given an opportunity to be heard on the appeal.

d. In any appeal the City Council will consult with the BAR and consider the written appeal, the criteria set forth within *this Section*, as applicable, and any other information, factors, or opinions it deems relevant to the application.

e. A final decision of the City Council may be appealed by the owner of the subject property to the Circuit Court for the City of Charlottesville, by filing with the court a petition at law, setting forth the alleged illegality of the action taken. Such petition must be filed with the circuit court within 30 days after Council's final decision. The filing of the petition will stay the Council's decision pending the outcome of the appeal; except that the filing of the petition will not stay a decision of City Council denying permission to demolish a building or structure. Any appeal which may be taken to the Circuit Court from a decision of the City Council to deny a permit for the demolition of a building or structure will not affect the right of the property owner to make the bona fide offer to sell.

f. In addition to the right of appeal set forth above, the owner of a building or structure, the demolition of which has been the subject of an application appealed to the City Council, will, as a matter of right, be entitled to demolish such building or structure if all of the following conditions have been met:

   i. The owner has appealed to City Council for permission to demolish the building or structure, and City Council has denied such permission;

   ii. The owner has, for the applicable sale period set forth herein below, and at a price reasonably related to the fair market value of the subject property, made a bona fide offer to sell the building or structure, and the land pertaining thereto, to a person or legal entity that gives reasonable assurance that the building or structure will be preserved and restored; and

   iii. No bona fide contract, binding upon all parties thereto, must have been executed for the sale of such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable sale period.

   iv. If all of the foregoing conditions are not met within the applicable sale period, then the City Council's decision denying a permit will stand, unless and until that decision is overturned by the Circuit Court. However, following expiration of the applicable sale period, a property owner may renew their request to the City Council to approve the demolition of the historic landmark, building or structure.

g. The time in which a property owner may take advantage of the right to appeal, the applicable "sale period" is as follows:

   i. 3 months, when the offering price is less than $25,000.00.

   ii. 4 months when the offering price is equal to or greater than $25,000.00 but less than $40,000.00.

   iii. 5 months when the offering price is equal to or is greater than $40,000.00 but less than $55,000.00.

   iv. 6 months when the offering price is equal to or greater than $55,000.00 but less than $75,000.00.

v. 7 months when the offering price is equal to or is greater than $75,000.00 but less than $90,000.00.

vi. 12 months when the offering price is equal to or greater than $90,000.00.

2. Validity Period

a. The validity period of a Certificate of Appropriateness is as follows:

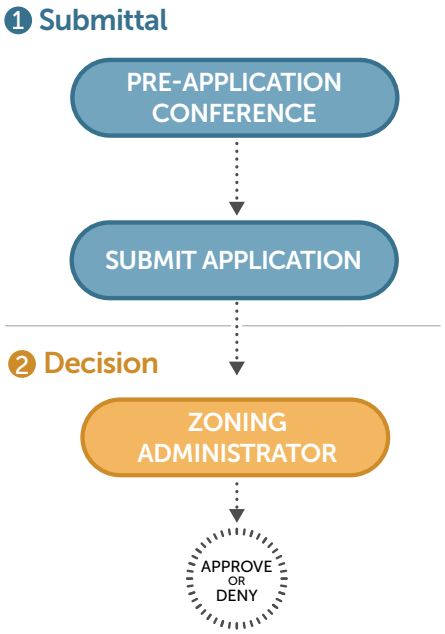
i. A Certificate of Appropriateness associated with a project for which a valid Development Plan is not required will expire and become void 18 months from the date of approval by the BAR, unless a building permit to construct the authorized improvements or activities has been issued; or, if no building permit is required, unless construction of the authorized improvements or activities has substantially commenced.

ii. The validity period of a Certificate of Appropriateness associated with a project for which a valid Development Plan is required must be consistent with that of the approved Development Plan according to *Sec. XX, Development Plan*, except a Certificate of Appropriateness will expire and become void 18 months from the date of approval by the BAR review if Development Plan approval has not been granted, or upon revocation or expiration of an approved Development Plan.

iii. Prior to the expiration of a Certificate of Appropriateness, upon written request and for reasonable cause, the Zoning Administrator or the BAR may extend the validity of any such certificate for a period not to exceed 1 year.

b. The issuance of a Certificate of Appropriateness cannot, in and of itself, authorize any construction, reconstruction, alteration, repair, demolition, or other improvements or activities requiring a building permit. Where a building permit is required, no activity authorized by a Certificate of Appropriateness is lawful unless conducted in accordance with the required building permit and all applicable building code requirements.

6.2.8. Corridor Review



A. Applicability

1. A Corridor Review for a Certificate of Appropriateness is required for activities described in this Section on any property located in the Entrance Corridor Overlay District.
2. A Certificate of Appropriateness is required for the following modifications:
   a. All development requiring a Development Plan, other than a one- or two-unit building.
   b. All improvements requiring a building permit, other than a one- or two-unit building, in which the work requiring the building permit is:
      i. New construction; or
      ii. An addition or modification of 25% or more of the gross area of an existing building or structure.
   c. Regardless of whether a building permit is required:
      i. Signs; and
      ii. Installations or replacements of roof coverings, windows, doors or siding on any building or structure, any part of which, once installed, will be visible from an Entrance Corridor Overlay District, other than those installed on a one- or two-unit building.
3. A Certificate of Appropriateness is not required for the following activities:
   a. Interior alterations to a building or structure;
   b. Construction of ramps and other modifications to serve the handicapped;
   c. Repair and maintenance of buildings or structures which are non-conforming for failure to comply with the provisions of *Sec. XX, Overlay Districts*;
   d. General maintenance of buildings or structures, where no substantial change in design or materials is proposed, including in-kind replacement of building components or materials; and
   e. Additions or modifications to a building or structure, where no substantial change in design or materials is proposed, as determined by the Zoning Administrator.

B. Application Requirements

1. Pre-Application Conference

a. Before submitting an application for Corridor Review, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Decision

a. The Zoning Administrator is authorized to approve requests for a Certificate of Appropriateness for a Corridor Review.

b. Once the Zoning Administrator determines the application is complete, the Zoning Administrator will notify the Planning Commission of the application and review the application against the requirements of this Code and other applicable design guidelines of the City.

c. The Zoning Administrator must review each application and approve, approve with conditions, or deny the application based on the standards as defined in this Code and any applicable design guidelines.

2. Planning Commission Decision

The Planning Commission is authorized to elect to decide on a Certificate of Appropriateness for a Corridor Review by a majority vote. When Planning Commission votes to decide on a Certificate of Appropriateness, the Zoning Administrator will review the application and will provide a staff report and recommendation to Planning Commission in advance of the meeting. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

D. Criteria for Review and Decision

Corridor Review will consider the following features and factors in determining the appropriateness of proposed construction, reconstruction, alteration, or restoration of buildings or structures pursuant to this Code:

1. Exterior architectural details and features of the subject building or structure;

2. Texture, materials, and color of materials proposed for use on the subject building or structure;

3. The extent to which the features and characteristics, are architecturally compatible or incompatible with similar features and characteristics of other buildings and structures having frontage on the same Entrance Corridor Overlay District streets as the subject property; and

4. Provisions of the Entrance Corridor Overlay District Design Guidelines.

E. Action After the Decision

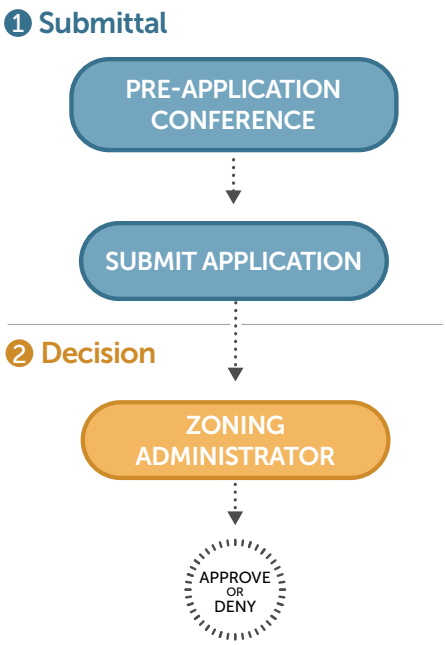
1. Notice of Decision

a. If the application is denied, the Zoning Administrator will provide notice of their decision to the applicant.

2. Appeal of Administrative Decision

For applications decided by the Zoning Administrator, the applicant or any other aggrieved party will have 10 days from the date of the decision to appeal the decision to the Planning Commission. No Certificate of Appropriateness will be issued prior to expiration of the 10-day period.

6.2.9. Development Plan



A. Applicability

1. Development Plan review is required for the following project types:
   a. New construction;
   b. Addition;
   c. Site modification; and
   d. Some changes of use.
2. A Development Plan is not required for a change of use provided that:
   a. Such change does not occasion additional parking under the requirements of this chapter;
   b. No additional ingress or egress, or alteration of existing ingress or egress is recommended by the City, based on intensification of use; and
   c. No additional ingress or egress, or alteration of existing ingress or egress is proposed.
3. Projects not requiring Development Plan review may require a Building Permit.

B. Application Requirements

1. Pre-Application Conference

Before submitting a Development Plan application, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Decision

a. Once the Zoning Administrator determines the application is complete, the Zoning Administrator will notify the Planning Commission of the application and review the application against the requirements of this Code and other applicable technical requirements of the City.

b. In reviewing the application, the Zoning Administrator will distribute the application for consultation and review by other City departments.

c. If after the internal review, the Zoning Administrator finds that the application does not meet all requirements of this Code, the Zoning Administrator will notify the applicant of the specific provisions that have not been met and offer the applicant the opportunity to make changes to the Development Plan.

d. Following review, the Zoning Administrator will approve, approve with conditions, that bring the application into conformance with this Code and other technical requirements of the City, or deny the application.

e. Review Time

i. Except as otherwise provided this Section, the Zoning Administrator must approve or deny a Development Plan application within 60 days after the date a complete application was officially submitted. In cases where an application has previously been denied, the Zoning Administrator must act on such application within 45 days after the application has been modified, corrected and re-submitted for approval.

ii. If approval of a feature of a Development Plan application by a state agency is necessary, the following procedures apply:

a) Any state agency making such review is required to complete its review within 45 days after receipt of the application. Upon receipt of approval from a state agency, the Zoning Administrator must act upon the application within 35 days. If the Planning Commission conducts a public review, it must act on the application within 45 days after receipt of approval from the state agency. All actions on an application must be completed by the Zoning Administrator or the Planning Commission, and, if necessary, state agencies, within a total of 90 days after the date the complete application was officially submitted.

b) Neither the Zoning Administrator nor the Planning Commission is required to approve a Development Plan application in fewer than 60 days after the date it was officially submitted, or 45 days after it has been officially resubmitted after a previous denial.

2. Planning Commission Decision

The Planning Commission is authorized to elect to decide on a Development Plan by a majority vote. When Planning Commission votes to decide on a Certificate of Appropriateness, the Zoning Administrator will review the application and will provide a staff report and recommendation to Planning Commission in advance of the meeting. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

D. Action After the Decision

1. Permits for Construction

Upon approval of a Development Plan, permits for construction required by the City Code of Ordinances Chapter 5 - Building Regulations; Property Maintenance and Chapter 10 - Water Protection may be prepared and submitted.

2. Appeal of Administrative Decision

For applications decided by the Zoning Administrator, the applicant will have 10 days from the date of the director's decision to appeal the decision to the Planning Commission, in accordance with the *Code of Virginia § 15.2-2259*.

3. Revisions to an Approved Development Plan

a. Minor revisions to an approved Development Plan may be approved by the Zoning Administrator. The following revisions are considered minor:

   i. Up to 10% increase or any decrease in gross floor area of a single building;

   ii. Up to 10% reduction in the approved setbacks from street or common lot lines; and

   iii. Relocation of parking areas, internal driveways or structures where relocation occurs more than 100 feet from street or common lot lines.

b. All other changes to an approved Development Plan must be resubmitted as a new application.

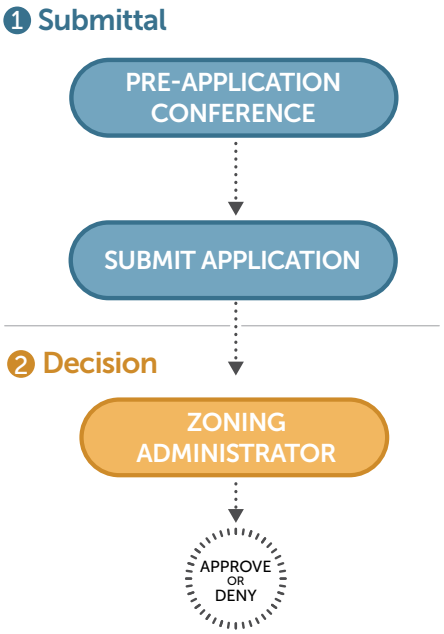
4. Expiration of a Development Plan

a. An approved Development Plan will be valid for 5 years from the date of approval, or for a longer period determined by the Zoning Administrator at the time of approval, taking into consideration the size and phasing of the proposed project. A Development Plan will be deemed final once it has been reviewed and approved, where the only requirement remaining to be satisfied in order to obtain a building permit is the posting of required bonds and escrows.

b. Upon application filed prior to expiration of a Development Plan, the Zoning Administrator, may grant an extension of such approval, taking into consideration the size and phasing of the proposed site and the laws, ordinances, and regulations in effect at the time of the request for an extension.

c. For so long as the approved Development Plan remains valid, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy, or plan adopted subsequent to the date of approval will adversely affect the right of the developer or their successor in interest to commence and complete an approved development in accordance with the lawful terms of the Development Plan, unless the change or amendment is required to comply with state law, or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety, or welfare.

6.2.10. Minor Subdivision



A. Applicability

1. Minor Subdivision applies to the division of land for the purpose of sale, lease, or building development when:
   a. No more than 5 zoning lots are created;
   b. Zoning lots are subdivided into sublots; and
   c. No new street or right-of-way is created to serve the project.
2. Minor Subdivision applies to boundary line adjustments.

B. Application Requirements

1. Pre-Application Conference

a. Before submitting a Minor Subdivision application, an applicant must schedule a pre-application conference with the Subdivision Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. At the pre-application conference, the Subdivision Administrator will determine if the application qualifies as a Minor Subdivision. If the Subdivision Administrator determines the application qualifies as a Major Subdivision, the application will be processed according to the procedures in *Sec. XX, Major Subdivision*.

2. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Subdivision Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Decision

a. Once the Subdivision Administrator determines the application is complete, the Subdivision Administrator will review the proposed application against the requirements of this Code and other applicable technical requirements of the City.

b. In reviewing the application, the Subdivision Administrator will distribute the application for consultation and review by other City departments.

c. Following review, the Subdivision Administrator will approve, approve with conditions, that bring the application into conformance with this Code and other technical requirements of the City, or deny the application.

d. Review Time

i. The Subdivision Administrator must act on any Final Plat application within 60 days after the complete application has been officially submitted for approval, or within 45 days after the application has been modified, corrected, and resubmitted for approval.

ii. If approval of a feature of a Final Plat application by a state agency is necessary, the Subdivision Administrator must forward the application to the state agency within 10 days of receipt of such application, and the Subdivision Administrator must act on the application within 35 days of receipt of approvals from all state agencies.

D. Criteria for Boundary Line Adjustments

1. The boundary lines of any lot or parcel of land may be vacated, relocated, or otherwise altered by recordation of a deed or boundary line adjustment plat, without vacation of a recorded plat, provided that no easements or utility rights-of-way located along any lot lines to be vacated may be extinguished or altered without the express consent of all persons holding any interest therein, and such consent must be evidenced by the signatures of such persons on the deed.

2. The action must not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. The deed reflecting the boundary line adjustment will reference the recorded plat by which the applicable lot lines were originally created, and the deed must be approved in writing, on its face, by the City Attorney.

3. The lots affected by a boundary line adjustment must have been:

   a. Part of an otherwise valid and properly recorded and approved subdivision plat; or

   b. Part of a properly recorded deed prior to the adoption of the first subdivision ordinance of the City that required an approved subdivision plat under the applicable circumstances.

E. Action After the Decision

1. Permits for Construction

Upon approval of a Development Plan, permits for construction required by the City Code of Ordinances Chapter 5 - Building Regulations; Property Maintenance and Chapter 10 - Water Protection may be prepared and submitted.

2. Appeal of Decision

For applications decided by the Subdivision Administrator, the applicant will have 10 days from the date of the director's decision to appeal the decision to the Planning Commission, in accordance with the *Code of Virginia § 15.2-2259*.

6.2.11. Major Subdivision

A. Applicability

Major Subdivision applies to the division of land for the purpose of sale, lease, or development that is determined by the Subdivision Administrator to not be a Minor Subdivision.

B. Application Requirements

1. Pre-Application Conference

a. Before submitting a Minor Subdivision application, an applicant must schedule a pre-application conference with the Subdivision Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Subdivision Administrator.

b. At the pre-application conference, the Subdivision Administrator will determine if the application qualifies as a Major Subdivision. If the Subdivision Administrator determines the application qualifies as a Minor Subdivision, the application will be processed according to the procedures in *Sec. XX, Minor Subdivision*.

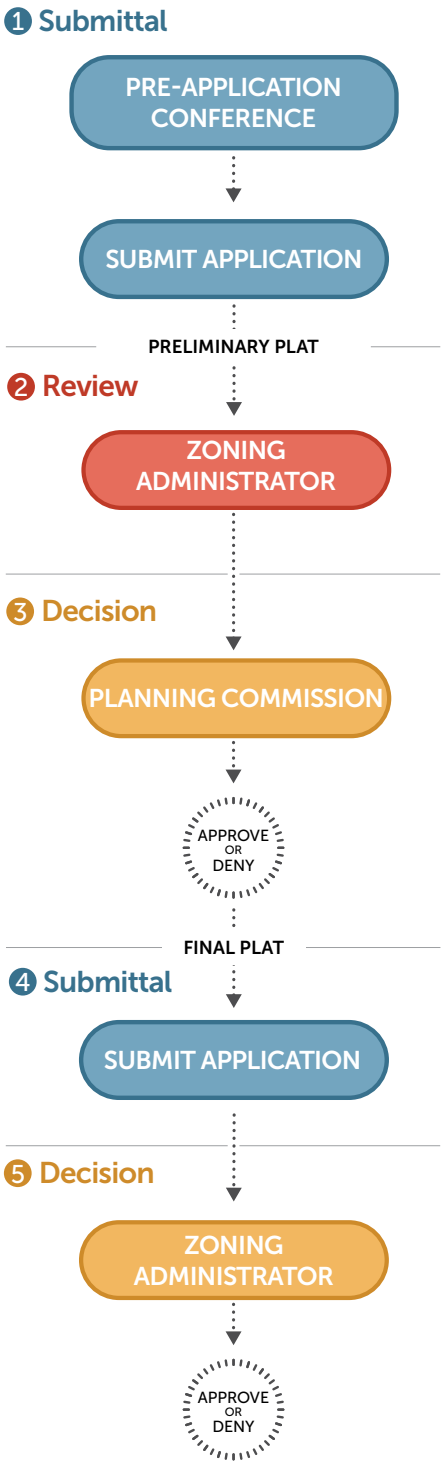
2. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Subdivision Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. General Major Subdivision Review Process

1. Major Subdivision approval is a two-step process. An applicant must first get Preliminary Plat approval from the Planning Commission and then get Final Plat approval from the Subdivision Administrator.

2. Anything regulated by this Code will be revised for compliance by the Subdivision Administrator, with additional review by other City departments.



D. Preliminary Plat

1. Review and Decision Process

a. Zoning Administrator Review

i. Upon determination of a complete application, the Subdivision Administrator will distribute the application for review by internal City departments.

ii. If after the internal review, the Subdivision Administrator finds that the Preliminary Plat does not meet all the applicable requirements of this Code, the Subdivision Administrator will notify the applicant of the specific provisions that have not been met and offer the application the opportunity to make changes to the Preliminary Plat.

iii. If after the internal review, the Subdivision Administrator finds that the Preliminary Plat meets all applicable requirements of the Code, the application will be certified as complying with all applicable requirements of the Code and scheduled for the next available Planning Commission meeting.

iv. Upon certification by the Subdivision Administrator that the Preliminary Plat complies with applicable requirements of the Code, no changes to the application are permitted prior to the Planning Commission meeting.

b. Planning Commission Decision

i. The Planning Commission will review all preliminary plats for major subdivision.

ii. In conducting review of a preliminary plat, the Planning Commission will review the plat for compliance with the requirements of this Code. The Planning Commission will consider any written statements submitted by the project developer and other staff's comments and recommendations. The Planning Commission may also consider any other evidence pertaining to the compliance of the Preliminary Plat with the requirements of this Code as it deems necessary for a proper review.

iii. If the Planning Commission determines that the Preliminary Plat complies with the requirements of this Code, it will approve the application and promptly issue a letter to the project developer stating the conditions that must be satisfied prior to submittal of the Final Plat. If the Planning Commission determines that the Preliminary Plat does not comply with the requirements of this Code, it will deny the application and promptly inform the project developer of the denial.

iv. A notice of denial must state the reasons for denial by identifying the plat's deficiencies and citing the applicable sections of this Code or other law, and what corrections or modifications will permit approval of the application. The Planning Commission must either mail a written notice of denial by first class mail, or deliver it, to the project developer. Within 60 days after the date the notice of denial was mailed or delivered, the project developer may resubmit the Preliminary Plat. If the project developer fails to timely resubmit the application, the Preliminary Plat will be deemed to be denied and a new application will be required for submittal of the Preliminary Plat.

v. Review Time

a) The Planning Commission must act on any Preliminary Plat application within 60 days after the complete application has been officially submitted for approval, or within 45 days after the plat has been modified, corrected, and resubmitted for approval.

b) If approval of a feature of a Preliminary Plat application by a state agency is necessary, the Planning Commission must forward the application to the state agency within 10 days of receipt of such application, and the Commission must act on the application within 45 days of receipt of approvals from all state agencies; however:

1) The Commission cannot be required to act on a application in fewer than 60 days from the date of its official submission, and;

2) All actions on Preliminary Plats must be completed by the Commission and, if necessary by state agencies, within a total of 90 days of the official submission date.

2. Action After the Decision

a. Permits for Construction

Upon approval of a Development Plan, permits for construction required by the City Code of Ordinances Chapter 5 - Building Regulations; Property Maintenance and Chapter 10 - Water Protection may be prepared and submitted.

b. Expiration of a Preliminary Plat

Once a preliminary plat is approved, it is valid for a period of 5 years, as specified in the *Code of Virginia § 15.2-2260.*

E. Engineering Review and Decision Process

Approval of a final stormwater management plan, and approval of a final erosion and sediment control plan, as may be applicable, is a condition of Final Plat approval. The Subdivision Administrator will not sign any Final Plat, unless and until final plans and approvals required by the City Code of Ordinances Chapter 10 - Water Protection have been obtained.

F. Final Plat

1. Review and Decision Process

a. The Subdivision Administrator will review the Final Plat for compliance with the requirements of this Code in effect at the time of Preliminary Plat approval, except as authorized by *Code of Virginia § 15.2-2261.* The Subdivision Administrator must make a good faith effort to identify all deficiencies, if any, during the review of the first Final Plat submittal. The Subdivision Administrator must consider the recommendations and determinations made by the plat reviewers.

b. If the agent determines that the Final Plat complies with the requirements of this Code and that all conditions of approval of the Preliminary Plat have been satisfied, the Subdivision Administrator must sign the Final Plat.

c. If the agent determines that the Final Plat does not comply with all requirements of this Code or that all conditions of approval of the Preliminary Plat have not been satisfied, the Final Plat will be denied and the Subdivision Administrator will promptly inform the project developer of the denial by issuing a notice of denial to the subdivider.

d. Review Time

i. The Subdivision Administrator must act on any Final Plat application within 60 days after the complete application has been officially submitted for approval, or within 45 days after the application has been modified, corrected and resubmitted for approval.

ii. If approval of a feature of a Final Plat application by a state agency is necessary, the Subdivision Administrator must forward the application to the state agency within 10 business days of receipt of such application, and the Subdivision Administrator must act on the application within 35 days of receipt of approvals from all state agencies.

2. Action After the Decision

a. Expiration of a Final Plat

i. Once a final plat is approved and the subdivider has recorded the plat, it is valid for at least 5 years, as specified in the *Code of Virginia § 15.2-2261*. Unless a plat is recorded within the City's land records within 6 months after final approval, approval will be deemed withdrawn and the plat will be marked void and returned to the Subdivision Administrator; however, if construction of any facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the City, the time for plat recordation will be extended to 1 year after final approval, or the time limit specified in the approved surety agreement, whichever is greater.

ii. By application of the subdivider filed prior to expiration of a final recorded plat, the Subdivision Administrator may grant an extension of its approval for additional periods as the authority may, at the time the extension is granted, determine to be reasonable in accordance with the provisions of the *Code of Virginia § 15.2-2261*.

b. Revisions to an Approved Subdivision

i. By application of the subdivider, during the period of validity of a recorded plat the Subdivision Administrator may approve minor modifications to such plat, including, without limitation, any modification that eliminates, relocates or otherwise alters 1 or more lot lines; provided, however, that the proposed modification does not involve the relocation or alteration of any streets, alleys, easements for public passage or other public areas, and provided further that no utility easements or rights-of-way are relocated or altered.

ii. An application for any such modification made during the period of validity of the plat will not constitute a waiver of any rights of the subdivider existing on the date of approval of the Final Plat, and the approval of any such modification will not extend the period of validity of the original Final Plat. A modified Final Plat will be signed by the owner of all land that is the subject of such plat.

iii. Nothing in this Section limits the right of an owner to apply to vacate a subdivision plat or any part thereof, or to apply for a boundary line adjustment as authorized by this Code.

c. Vacation of a Plat

i. A recorded plat or any part thereof may be vacated pursuant to *Code of Virginia §§ 15.2-2271 through 15.2-2274.* The clerk of the circuit court in whose office any vacated plat has been recorded must write in plain legible letters across such plat, or the part thereof so vacated, the word "vacated," and must also make a reference on the vacated plat to the volume and page in which the instrument of vacation is recorded.

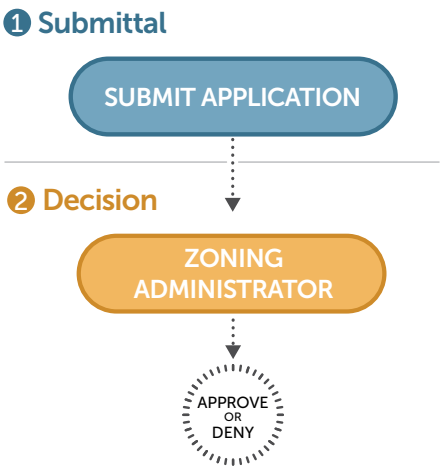
ii. Where no lot has been sold within a subdivision, the recorded plat, or part thereof, may be vacated according to either of the following methods:

a) Administratively, with the consent of both the Subdivision Administrator. Any such vacation must be accomplished only by a written instrument, declaring the plat, or part thereof, to be vacated, and such written instrument must be approved and signed by the City Attorney. Recordation of such written instrument must operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in, and to reinvest the owners, proprietors and trustees, if any, with the title to the streets, alleys, easements for public passage and other public areas laid out or described in the plat.

b) By ordinance of City Council, provided that no facilities for which bonding is required pursuant to *Code of Virginia § 15.2-2241 through 2245* have been constructed on the property and no facilities have been constructed on any related section of the property located in the subdivision within 5 years of the date on which the plat was first recorded.

iii. In cases where any lot has been sold within a subdivision, the recorded plat, or part thereof may be vacated in accordance with *Code of Virginia § 15.2-2272*. Any written instrument or ordinance vacating a plat pursuant to *Code of Virginia § 15.2-2272* will operate to destroy the force and effect of the recording of the plat or part thereof so vacated, as set forth within *Code of Virginia § 15.2-2274.*

6.2.12. Permit Review



A. Applicability

1. Permit Review is required for the following:

   a. **Tree Removal Permit.** Applies to all properties and is required prior to the removal of any tree 15 inches in caliper or more per, *Sec. XX, Tree Preservation and Replacement*

   b. **Floodplain Permit.** Applies to use, activity or development within any Special Flood Hazard Area (SFHA) as defined in *Sec. XX, Flood Hazard Protection Overlay District*.

   c. **Sign Permit.** Applies to the erection, installation, display, structural alteration, or change of any sign, except those not requiring a permit as defined in *Sec. XX. Signs*.

   d. **Temporary Use Permit.** Applies to certain uses, as defined in Sec. XX, Temporary Uses and Structures.

2. Signs in a Major Architectural Design Control District, Historic Conservation District, Entrance Corridor or on a Individual Protected Property are required to apply for a Certificate of Appropriateness.

B. Application Requirements

1. To apply for Permit Review, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

2. Floodplain Permit

Every application seeking a permit from the Zoning Administrator, and all other applications seeking an approval from the City allowing the use or development of land, or authorizing any land disturbing activity, within any Special Flood Hazard Areas (SFHA) must include the following information:

a. The Base Flood Elevation (BFE) at the site, obtained from the Flood Insurance Study (FIS)/Flood Insurance Rate Map (FIRM) or, if not established on the FIS/FIRM, established in accordance with *Sec. XX, Floodplain Hazard Protection Overlay District*;

b. The proposed elevation of the lowest floor including basement;

c. For structures to be flood-proofed, non-residential only, the elevation to which the structure will be flood-proofed;

d. Information from a topographic survey, showing existing and proposed ground elevations; and

e. Documentation or evidence of the location of the applicable SFHA, as determined in accordance with *Sec. XX, Floodplain Hazard Protection Overlay District*.

C. Review and Decision Process

1. Administrative Decision

a. The Zoning Administrator is authorized to approve requests for a permit.

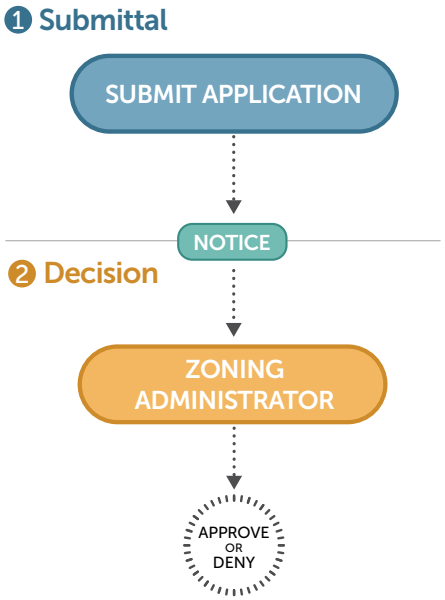
b. The Administrator must review each application and approve, approve with conditions, or deny the application based on the standards as defined in this Code.

D. Action After the Decision

1. Appeal of Decision

Appeals of administrative decisions on permits may be taken to the Board of Zoning Appeals and must follow the procedures in *Sec. XX, Appeals to the Board of Zoning Appeals.*

6.2.13. Administrative Modification



A. Applicability

1. The Zoning Administrator may grant a modification of 10% or less of any dimensional standard of this Code.
2. Administrative Modifications cannot be granted to the following:
   a. Dwelling units per zoning lot;
   b. Overall height.
   c. Development bonuses; or
   d. Use standards.

B. Application Requirement

An application for Administrative Modification must be submitted to the Zoning Administrator along with the development application to which the request for Administrative Modification pertains. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures.*

C. Review and Decision Process

1. Administrative Decision

a. During the development review process, the Zoning Administrator is authorized to approve requests for Administrative Modification.

b. The Zoning Administrator must review each application and approve, approve with conditions, or deny the application in accordance with the requirements of *Code of Virginia, § 15.2-2286.*

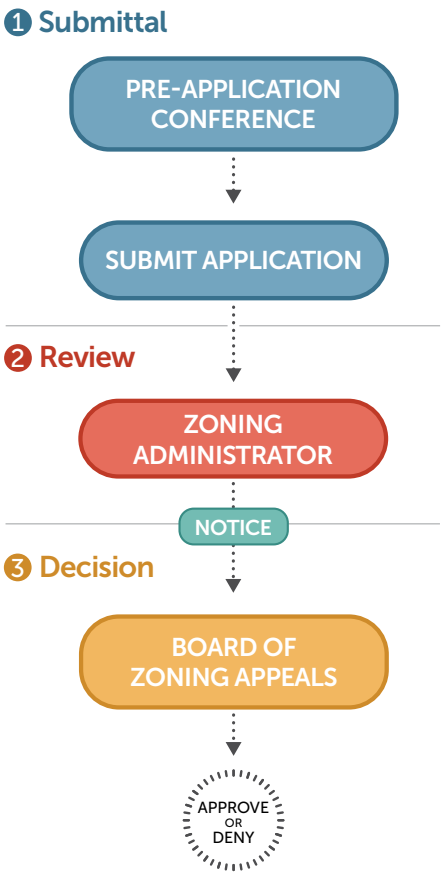
c. Prior to granting the Administrative Modification, the Zoning Administrator must provide written notice to all adjoining property owners in accordance with the requirements of *Code of Virginia, § 15.2-2286.*

D. Action After the Decision

1. Appeal of Decision

Appeals of administrative decisions on Administrative Modification may be taken to the Board of Zoning Appeals and must follow the procedures in *Sec. XX, Appeals to the Board of Zoning Appeals.*

6.2.14. Variance



A. Applicability

According to the *Code of Virginia § 15.2-2201*, a variance applies to a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It must not include a change in use, which is classified as a Zoning Amendment.

B. Application Requirements

1. Application Initiation

An application for a Variance may be initiated by any property owner, tenant, government official, department, board or bureau.

2. Application Submittal

a. Pre-Application Conference

Before submitting an application for a Variance, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the Variance application and will provide a staff report and recommendation to Board of Zoning Appeals (BZA) in advance of the public meeting. Prior to the preparation of the staff report, City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. A copy of the petition will be sent to the Planning Commission which may send a recommendation to the Board or appear as a party in the hearing.

c. Notice of the public hearing must be given in accordance with *Sec. XX. Common Review Procedures.*

2. Board of Zoning Appeals Decision

a. The BZA will conduct a public hearing on the application and proceed in accordance with the requirements of the *Code of Virginia § 15.2-2308.1, et seq* and its rules.

b. The BZA has the power to grant a Variance if the criteria set forth below are met; provided that the burden of proof will be on the applicant to provide by a preponderance of the evidence that the application meets the standard for a Variance in the *Code of Virginia § 15.2-2201 and 15.2-2309* and as set forth in the criteria below. If the criteria are not met, the BZA will deny the Variance. The BZA will make findings in its Order granting or denying the Variance.

c. In authorizing a Variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with.

D. Criteria for Review and Decision

1. A Variance will be granted if the evidence presented to the BZA shows that the strict application of the terms of this Code would unreasonably restrict the utilization of the property or that the granting of the Variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of this Code, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and

   a. The property interest for which the Variance is being requested was acquired in good faith and any hardship was not created by the applicant for the Variance;

   b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

   c. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Code;

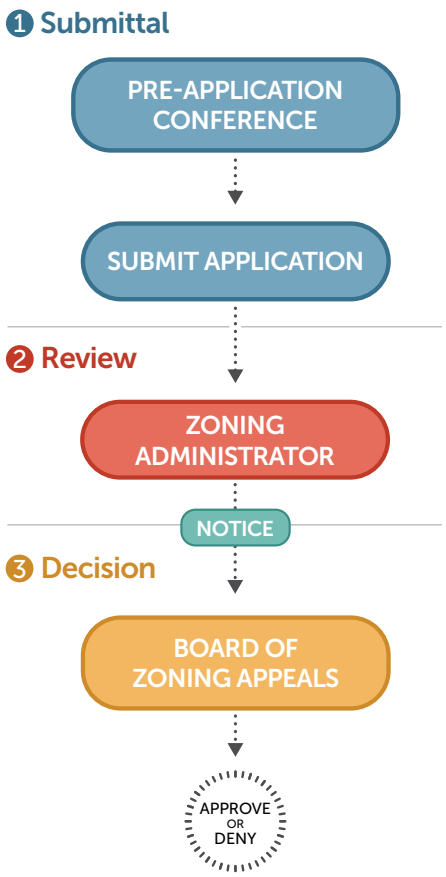
   d. The granting of the Variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

   e. The relief or remedy sought by the Variance application is not available through a special exception process or the process for modification that is authorized by this Code at the time of the filing of the Variance application.

2. Any Variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the Variance subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990, as applicable.

3. Nonconforming use of neighborhood lands, structures, or buildings in the same district, and permitted or nonconforming use of lands, structures, or buildings in other districts cannot be considered grounds for issuance of a Variance.
4. The BZA cannot grant a Variance to allow a use not permitted by this Code in the district involved or to allow a use not permitted under state law or a change in use which shall be accomplished by a Zoning Amendment.

6.2.15. Floodplain Variance



A. Applicability

Applies to a deviation from certain provisions set forth in *Sec. XX, Flood Hazard Protection Overlay District.*

B. Application Requirements

1. Application Initiation

An application for a Floodplain Variance may be initiated by any property owner, tenant, government official, department, board or bureau.

2. Application Submittal

a. Pre-Application Conference

Before submitting an application for a Variance, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

b. Application Submittal

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the Floodplain Variance application and will provide a staff report and recommendation to Board of Zoning Appeals (BZA) in advance of the public meeting. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice of the public hearing must be given in accordance with *Sec. XX, Common Review Procedures.*

2. Board of Zoning Appeals Decision

a. The BZA will conduct a public hearing on the application.

b. Floodplain Variances will be granted by the BZA only upon a determination that:

   i. That a failure to grant the variance would result in exceptional hardship on the property;

   ii. That the granting of such variance will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety, extraordinary public expense, any nuisances, any fraud or victimization of the public, or any conflict with federal, state, or City laws, regulations, or ordinances.

c. Floodplain Variances will be issued only after the BZA has determined that the variance will be the minimum required to provide relief from this Code.

d. Generally, the granting of Floodplain Variances will be limited to lots having a size of less than ½ acre; however, circumstances may require the BZA to deviate from this general provision. However, as the lot size increases beyond ½ acre, the technical justification required for issuing a variance increases. Floodplain Variances may be issued by the BZA for new construction or substantial improvements to be erected on a lot of ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation (BFE), in conformance with the provisions of this Section.

e. Floodplain Variances may be granted by the BZA for new construction, substantial improvements, and for other development necessary for the conduct of a functionally dependent use, provided that the criteria of this section are met, and the structure, use, or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

f. The BZA may refer any application for a Floodplain Variance, and accompanying documentation, to a professional engineer licensed by the Commonwealth of Virginia, or other qualified person or agency, for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

g. The BZA will notify the applicant for a Floodplain Variance, in writing, that the approval of a Floodplain Variance to construct a structure below the BFE increases the risks to life and property and will result in increased premium rates for flood insurance. A record must be maintained by the Zoning Administrator of this notification as well as all actions of the BZA pursuant to this section, including justification for the issuance of the Floodplain Variances. Any Floodplain Variances approved by the BZA must be noted in the annual or biennial report submitted by the Zoning Administrator to the Federal Insurance Administrator.

D. Criteria for Review and Decision

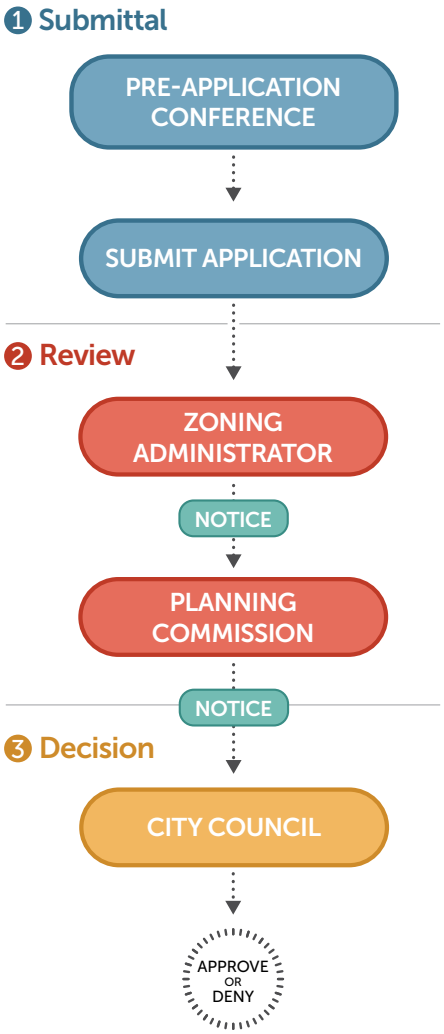
In considering applications for Floodplain Variances, the BZA will consider relevant factors and procedures specified by state statutes and city ordinances, and the BZA will also consider the following additional factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. A variance cannot be granted for any proposed use, development, or activity within any floodway that will increase the BFE;

2. The danger that materials may be swept on to other lands or downstream to the injury of others;

3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
5. The importance of the services provided by the proposed facility to the community;
6. The requirements of the facility for a waterfront location;
7. The availability of alternative locations not subject to flooding for the proposed use;
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
10. The safety of access by ordinary and emergency vehicles to the property in time of flood;
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
12. Floodplain Variances for repair or rehabilitation of historic structures may be granted upon the additional determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the proposed variance is the minimum necessary to preserve the historic character and design of the structure; and
13. Such other factors which are relevant to the purposes of *Sec. XX, Flood Hazard Protection Overlay District*.

6.2.16. Special Use Permit



A. Applicability

Applies to certain use that is not permitted in a particular district except by a Special Use Permit (SUP) granted under the provisions of this Code with conditions when public necessity, convenience, general welfare, and good zoning practice require. The special uses that are permitted are set forth in *Article XX, Uses* under the respective district.

B. Application Requirements

1. Pre-Application Conference

Before submitting an application for a SUP, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Submitting an Application

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

a. The Zoning Administrator will review the application for a SUP and will provide a staff report and recommendation to Planning Commission in advance of the public hearing. Prior to the preparation of the staff report, other City staff may make recommendations to the Zoning Administrator to include in the staff report.

b. Notice of public hearings must be given in accordance with *Sec. XX, Common Review Procedures*

2. Planning Commission Review

a. The Planning Commission will conduct a public hearing on the application.

b. The Planning Commission will review and make recommendations to City Council in the same manner as provided within *Sec. XX Zoning Map Amendment* for an owner-initiated petition for a zoning map amendment.

3. City Council Decision

a. The City Council will conduct a public hearing on the application.

b. If the City Council grants a SUP, the Council shall set forth any reasonable conditions which apply to the approval granted.

D. Criteria for Review and Decision

In considering an application for a SUP, the City Council will consider the following factors:

1. Whether the proposed use will be harmonious with existing patterns of use and development within the neighborhood and the zoning district in which it will be developed;
2. Whether the proposed use and associated public facilities will substantially conform to the Comprehensive Plan;
3. Whether the proposed use will have potentially adverse impacts on the surrounding neighborhood, or the community in general, and, if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts. Potential adverse impacts to be considered include, but are not necessarily limited to, the following:
   a. Traffic or parking congestion;
   b. Noise, lights, dust, odor, fumes, vibration, and other factors which adversely affect the natural environment; and
   c. Destruction or encroachment upon conservation or historic districts.
4. Whether with the conditions the SUP is consistent with public necessity, convenience, general welfare, and good zoning practice; and
5. When the property that is the subject of a SUP application is within a Design Control District, the City Council will refer the application to the BAR or Planning Commission, as may be applicable, for recommendation as to whether the proposed use will have an adverse impact on the district, and for recommendation as to reasonable conditions which, if imposed, would mitigate any such impacts. The BAR or Planning Commission, as applicable, must submit a written report of its findings in support of its recommendation to City Council.

E. Action After the Decision

1. Amendments

A SUP may be amended following the same procedures as for approval of an original SUP application.

2. Applicability and Validity

a. A SUP, together with any amendments and modifications, apply to the property for which it was issued so long as such property is used for the purpose approved within such permit, and is not transferable to any other property.

b. A special use permit will expire:

   i. 18 months from the date of approval by City Council if no development plan is required and a building permit to the construct the authorized improvements for the special use has not been approved.

   ii. 18 months from the date of approval by City Council if no building permit is required and the use has not commenced operation as approved by the SUP.

   iii. 18 months from the date of approval by City Council in the case of proposed new construction if preliminary Development Plan approval has not been granted.

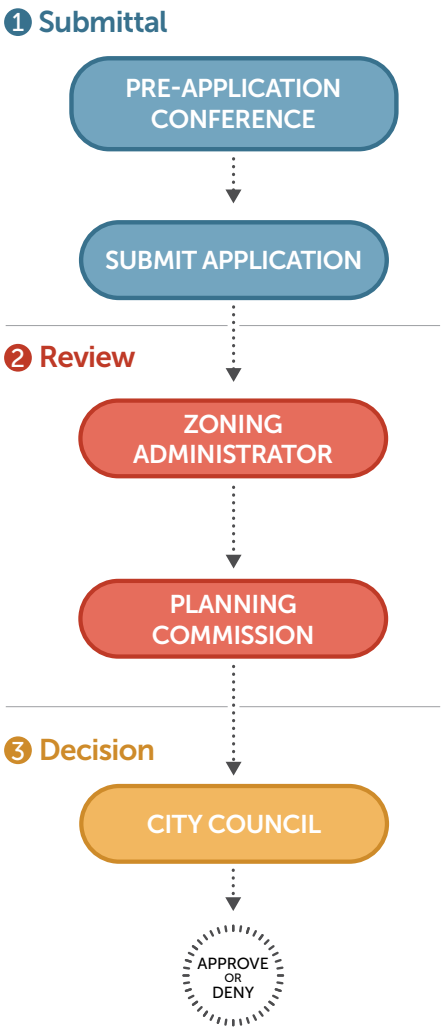
   iv. Upon revocation of an approved preliminary site plan or expiration of an approved Development Plan for a SUP use, if the SUP is associated with new construction for which a valid Development Plan is required.

   v. In the event that the use allowed by a SUP once established is not used for a period of 2 consecutive years.

c. Prior to the expiration of a SUP and upon written request by the applicant to the Zoning Administrator, the Zoning Administrator, if the SUP remains in compliance with all applicable ordinances and policies, may grant an extension of up to 1 year. A request for an extension must be submitted prior to expiration of the SUP. The Zoning Administrator will provide written notification of the decision on the extension request within 14 business days.

d. A SUP is revocable upon written order of City Council at any time because of the failure of the owner or operator of the use allowed by the SUP to observe all conditions and requirements with respect to the maintenance and conduct of the use. The City Council may revoke the SUP after notice and public hearing as provided by the *Code of Virginia § 15.2-2204*.

6.2.17. Critical Slopes Special Exception



A. Applicability

Applies to requests for a waiver to the standards of *Sec. XX Critical Slopes.*

B. Application Requirements

1. Pre-Application Conference

Before submitting an application for a Critical Slopes Special Exception, an applicant must schedule a pre-application conference with the Zoning Administrator to discuss the procedures, standards, and regulations required for approval. This requirement may be waived at the discretion of the Zoning Administrator.

2. Submitting an Application

Following the pre-application conference, an applicant may start the application process. To begin, a complete application form, required plans, and review fees must be filed the Zoning Administrator. Other general submittal requirements for all development review applications are listed in *Sec. XX, Common Review Procedures*.

C. Review and Decision Process

1. Administrative Review

The Zoning Administrator will review the application for a Critical Slopes Special Exception and will provide a staff report and recommendation to Planning Commission in advance of the public hearing. Prior to the preparation of the staff report, City staff may make recommendations to the Zoning Administrator to include in the staff report.

2. Planning Commission Review

The Planning Commission will review the application and report its findings and recommendations to the City Council.

3. City Council Decision

City Council may grant a Critical Slopes Special Exceptions if it finds that, due to unusual size, topography, shape, location, or other unusual physical conditions, or existing development of a property, the requirements of *Sec. XX Critical Slopes* would effectively prohibit or unreasonably restrict the use, reuse

or redevelopment of such property or would result in significant degradation of the site or adjacent properties.

D. Criteria for Review and Decision

City Council will review an application for a Critical Slopes Special Exception according to the following criteria:

1. Whether the public benefit of the proposed encroachment outweighs the public benefit of protecting the area of slope proposed to be impacted;
2. Whether the amount of impact has been limited to the greatest extent possible;
3. Whether sufficient mitigation has been proposed to limit the impact of the proposed encroachment;
4. Whether steps have been taken to limit or prevent impacts to portions of the sloped area with environmental or scenic value or vulnerability to disturbance; and
5. Whether the proposed development is consistent with the zoning district and Comprehensive Plan.

6.2.18. Appeals to the Board of Zoning Appeals

A. Applicability

An appeal to the Board of Zoning Appeals (BZA) may be taken by any aggrieved person or by any officer, department, board or bureau of the City affected by any decision of the Zoning Administrator in the administration or enforcement of this Chapter. The failure or refusal to act of the Zoning Administrator this Chapter constitutes a decision appealable pursuant to this Section.

B. Application Requirements

1. An appeal must be taken within 30 days after the decision appealed from by filing with the Zoning Administrator l, and with the BZA, a notice of appeal specifying the grounds thereof.
2. Any written notice of a zoning violation or a written order of the Zoning Administrator must include a statement informing the recipient that they may have a right to appeal such notice or order within 30 days in accordance with this Section, and that the decision is final and unappealable if not appealed within 30 days.

C. Review and Decision Process

1. Administrative Action

a. The Zoning Administrator will transmit to the BZA, all the documents constituting the records upon which the action appealed from was taken.

b. Published notice of the public hearing must be given in accordance with *Sec. XX. Common Review Procedures*, as well as due notice to the parties in interest.

2. Board of Zoning Appeals Action

a. In reviewing the actions of the Zoning Administrator, the BZA may, so long as its action is in conformity with the terms of this Chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end will have the powers of the Zoning Administrator.

b. The concurring vote of a majority of the members is necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from this Chapter.

c. The BZA must decide on the appeal within 60 days of the notice to the parties in interest.

d. An appeal to the BZA from any action of an official taken pursuant to this Chapter will stay the effect of the action appealed from; provided, however, that an appeal cannot operate as a stay if the official performing such action certifies to the Board that the Public Health or Safety requires that the action remain in effect pending a decision on the appeal. If such a certification is made to the BZA, the person pursuing the appeal may contest the accuracy of the certification. The BZA will in such case immediately hear and determine the question of whether the action appealed from should be stayed pending a decision on the merits of the appeal.

DIV. 6.3. NONCONFORMITIES

6.3.1. General

A. Intent

The provisions of this Division provide relief from the requirements of the Zoning Code for any existing nonconformity, defined as any lot, building or structure, or use that conformed to the zoning regulations at the time they were established, but do not conform to current requirements of this Zoning Code.

B. General Standards

The following general rules apply to nonconformities. Specific rules in the following Sections may provide additional standards or exceptions to these general rules:

1. Maintenance and repair or renovation project activities, as defined in *Sec. XX, Project Types*, may be conducted on a nonconforming building, structure, or use without triggering any of the standards of this Section.
2. No new construction, addition, site modification, facade modification, or change of use project activities, as defined in *Sec. XX, Project Types*, may occur on any nonconforming lot or to any nonconforming building or structure, or nonconforming use, that increases the degree of nonconformity with any individual standard in this Development Code, except where allowed in the following Sections.
3. Demolition that reduces compliance with the standards or rules in any zoning district is not allowed, except in conjunction with a new project activity that allows the project to meet the minimum requirements.
4. The nonconforming status of any nonconforming lot, building or structure, or use must adhere solely to the land, and not to the owner, tenant or other holder of any legal title to the property or the right of possession of the property.
5. Nothing in this Division will be construed to prevent removal of a valid nonconforming manufactured housing unit from property and replacement of that unit with another, comparable manufactured housing unit that meets the current HUD manufactured housing code. Such replacement unit will retain the valid nonconforming status of the prior unit.

C. Verification

1. Prior to approval of any change in a nonconforming lot, building or structure, or use, the lawful status of the lot, building or structure, or use must be verified by the Zoning Administrator. The Zoning Administrator may also verify the lawful status of a nonconforming lot, building or structure, or use upon the request of the owner of the property, the request of an abutting property owner, or upon the Zoning Administrator's own initiative.
2. In verifying the lawful status of a nonconforming lot, building or structure, or use the Zoning Administrator must determine the following in writing:
    a. Whether the use, lot, or building or structure is lawfully nonconforming;
    b. The location and gross floor area of all buildings;

c. The location, use and size of all structures other than buildings;

d. The area of land devoted to all aspects of the nonconforming lot, building or structure, or use, including buildings, parking, outside storage, travel ways, and open spaces; and

e. A description of the principal use and all accessory uses that make up the lawful nonconforming use as a whole.

3. The Zoning Administrator's determination will be based on information provided by the owner of the property, information provided by any other persons with knowledge of the property, and on any other information available to the Zoning Administrator through public records. Public record information may include, but is not be limited to, records of permits, licenses, property tax assessments, business records, photographs, plats, and plans.

4. The Zoning Administrator will provide a copy of their determination to the property owner. The Zoning Administrator's determination will be final after 30 days unless an appeal is filed with the Board of Zoning Appeals.

5. The Zoning Administrator may keep and maintain records of all verified nonconforming lots, buildings and structures, and uses. No less than every two years after the original date of verification, the owner or operator of a verified nonconforming lot, building or structure, or use may file a report with the Zoning Administrator showing that the nonconformity has not ceased for a 2 year period, or been abandoned, and that the lot, building or structure, or use is being used, maintained or operated in accordance with the original decision rendered by the nonconforming verification process and authorized changes.

6.3.2. Nonconforming Lots

A. Authority to Continue

1. Any lot of record, located within any zoning district, that is nonconforming as to required lot area or lot frontage may be used for any use permitted by the zoning district, provided all other standards of the zoning district are met.

2. Where yard requirements within a particular zoning district would preclude construction on a nonconforming lot, the Zoning Administrator can establish alternate yard requirements, which will consist of the following requirements:

   a. The setbacks applicable to the last building established on the nonconforming lot, or if no building previously existed on the lot, then

   b. The average of the setbacks applicable to the buildings currently located on the same block as the nonconforming lot.

B. Permitted Changes

Nonconforming lots may change as follows:

1. A nonconforming lot may be increased in lot size, lot width, or both, to make the lot less nonconforming;

2. The boundaries of a nonconforming lot may be adjusted, along with the boundaries of any contiguous conforming lot, provided such adjustment does not make the conforming lot nonconforming and does not make the nonconforming lot more nonconforming.

3. A boundary adjustment between or among 2 or more adjoining nonconforming lots will be permitted provided that no new lot is created.

4. When a building or structure to be constructed or expanded is located on more than 1 nonconforming lot, a boundary adjustment will be required to consolidate the lots to make them less nonconforming.

5. When a nonconforming lot is changed as allowed within this Section, and when 2 or more nonconforming lots are assembled to create a conforming lot, a plat of subdivision must first be filed and approved in accordance with the *Sec. XX, Approval Processes.*

6.3.3. Nonconforming Buildings and Structures

A. Permitted Changes

1. Changes to a nonconforming structure must be in accordance with the provisions of this Section.

2. A nonconforming structure damaged by casualty, as distinguished from ordinary wear and tear, may be restored in accordance with the following:

   a. A nonconforming structure damaged by any casualty may be restored to its condition prior to the casualty, provided such restoration is begun within twelve months of the date of the casualty and provided further that such restoration, once begun, is completed within twenty-four months of the casualty.

   b. Restoration of a nonconforming structure may include minor alterations, cosmetic modifications, interior renovations, or similar changes; however, restoration of a nonconforming structure cannot include any expansion unless allowed by the standards of *Sec. XX, Additions*.

   c. Restoration may include changes that make the structure less nonconforming than it was prior to the casualty.

   d. Prior to any restoration the nonconforming status of the structure must be verified by the Zoning Administrator.

3. A solar energy system may be placed on or attached to a nonconforming building or structure.

B. Expansions

1. Expansions of a nonconforming structure must meet the requirements of the *Article 34-2, Zoning* Districts and *Article 34-4, Development Standards* with the following exceptions:

   a. If the nonconforming structure does meet build-to width requirements of the zoning district, the expansion must meet the requirements of this Section.

   b. In a Residential District, a nonconforming structure that encroaches into the setback may be expanded as long as the expansion will not result in an increase in the encroachment. However, expansions in height to existing nonconforming structure, which do not meet current setback requirements, is permitted only if:

      i. The structure is only being increased in height, and

      ii. The footprint of the structure will remain unchanged by the proposed expansion in height.

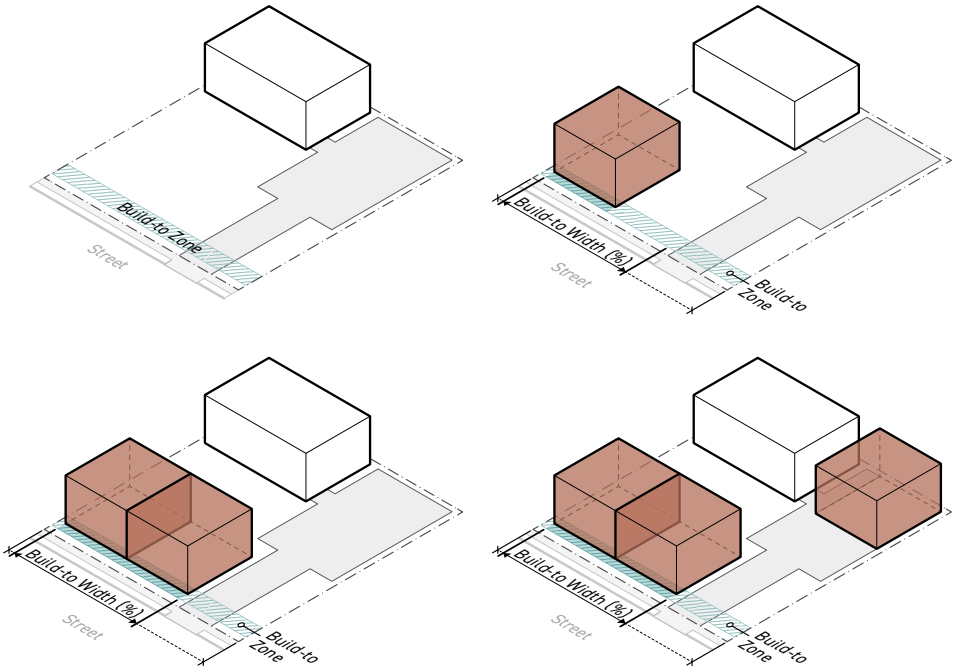
2. If the nonconforming structure to be expanded is also an Individually Protected Property, or a contributing structure within an Architectural Design Control District, then that structure is not required to meet any development standard that would require modification of the structure itself, and the Board of Architectural Review must approve a Certificate of Appropriateness for the proposed expansion.
3. The placement or installation of a solar energy system on a building or lot will not be deemed an expansion of a nonconforming building or structure, and the area occupied by any such system will not be included within the calculation of percentages of expansion.
4. Where a nonconforming structure is utilized for or in connection with a nonconforming use, no expansion of the nonconforming structure will be approved unless the Zoning Administrator certifies one of the following:
    a. The expansion of the nonconforming structure would not result in expansion of the nonconforming use, or
    b. The expansion of the nonconforming structure would result in expansion of the nonconforming use, but expansion of the nonconforming use would meet the requirements of *Sec. XX, Nonconforming Uses*.
5. Prior to the approval of any expansion of a nonconforming structure, nonconforming status will be verified by the Zoning Administrator.
6. In the event of any permitted expansion of a nonconforming structure, all signs located on the property must be brought into full compliance with current Zoning Code requirements.

C. Nonconforming Build-To Requirement

When an existing building is being expanded or a new building is being constructed, and the building or lot does not meet the build-to width requirement, the following provisions apply.

1. New Buildings on an Interior Lot

All new construction must occupy the build-to zone until the build-to width requirement has been met. Until all build-to width standards have been met, new buildings must occupy the build-to zone for of their entire building width.

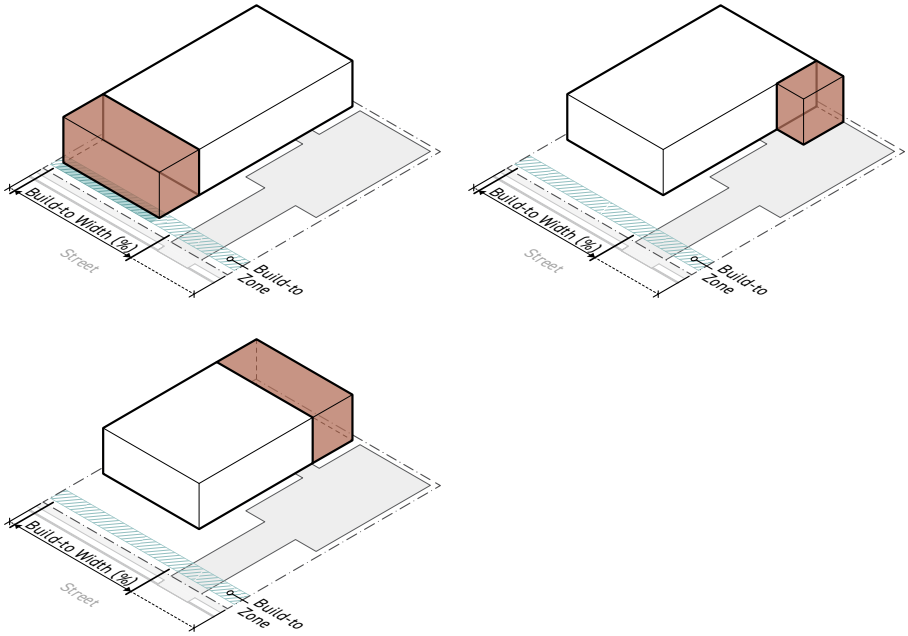


2. Additions on an Interior Lot

a. Any additions to the front of an existing building must occupy the build-to zone. The addition does not have to meet the required build-to width for the entire lot. Front additions with a maximum floor area of 10% of the existing building footprint are allowed behind the build-to zone.

b. Side additions having a floor area less than 20% of the existing building footprint are allowed. Once the build-to width standard has been met, side additions of any size are allowed.

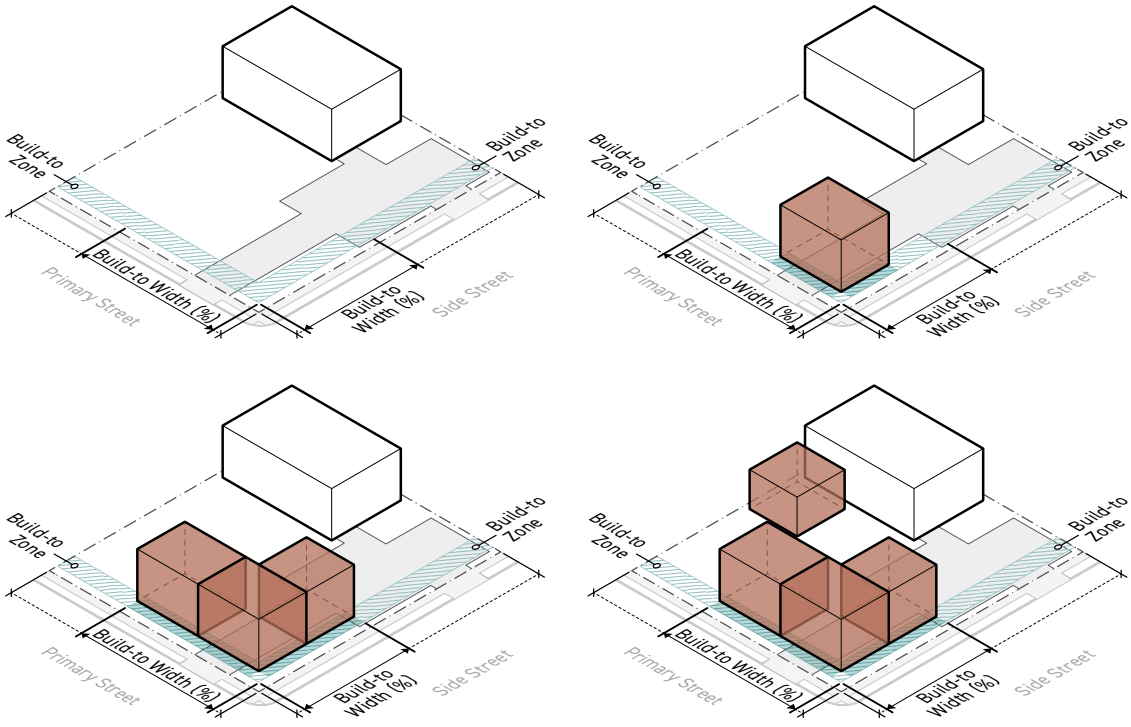
c. Rear additions of any size are allowed. Transition setbacks may apply, see *Sec. XX. Transitions and Buffers.*



3. New Buildings on a Corner Lot

a. All new buildings must occupy the build-to zone until the build-to width requirement for both streets have been met.

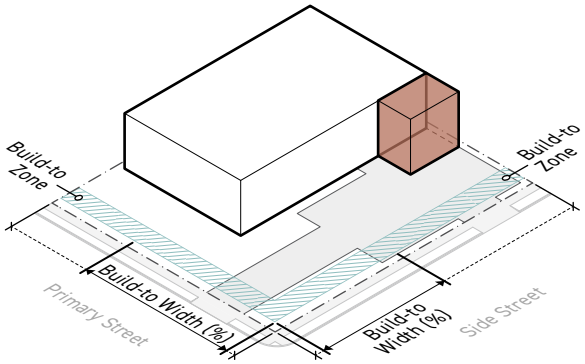
b. Once the build-to width requirement has been met for both streets, new buildings may be placed behind the build-to zone.



4. Additions on a Corner Lot

a. Any addition to the front of an existing building must be located within the build-to zone on the primary street. The addition does not have to meet the minimum build-to width for the entire lot. Front additions with floor area no greater than 10% of the existing building footprint are allowed behind the build-to zone.

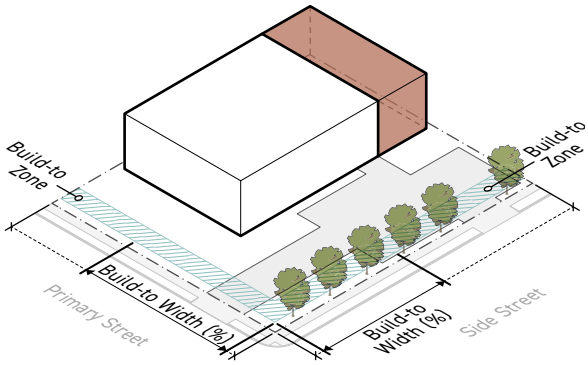
b. Side additions with floor area no greater than 20% of the existing building footprint are allowed. Once the build-to width standard has been met for both streets, side additions of any size are allowed.



c. Rear additions of any size, located behind the build-to zone, are allowed provided:

i. A landscape area at least 6 feet wide adjacent to the side street lot line is installed across the entire length of the side street frontage. Breaks for pedestrian, bicycle, and vehicular access of the minimum practical width are allowed.

ii. The landscape area must include medium or large trees planted an average of 40 feet on-center along the entire landscape area.



iii. Trees should be planted offset from street trees to maximize space for canopy growth.

iv. All landscaping must meet the applicable standards of *Sec. XX, Landscaping Requirements and Standards.*

6.3.4. Nonconforming Uses

A. Authority to Continue

1. A nonconforming use discontinued for a period of 2 years will lose its nonconforming status, and any further use must conform to the provisions of this Zoning Code. Vacancy or non-use of the building of a nonconforming use for a 2 year period will establish a presumption that such use has been discontinued.
2. Continuation of a use which is accessory to the principal nonconforming use during the two-year period, without continuation of the principal nonconforming use itself, cannot operate to continue the principal nonconforming use.
3. No use that is accessory to a principal nonconforming use can be continued after nonconforming status is lost.
4. A use that is accessory to a permitted principal use cannot be made the basis for a nonconforming use.

B. Permitted Changes

1. Changes to a nonconforming use must be in accordance with the provisions of this Section.
2. A nonconforming use may change to a more restricted nonconforming use, if approved by the Zoning Administrator, based on the following standards:
    a. The Zoning Administrator must verify the status of the nonconforming use based on the standards of this Section. The Zoning Administrator will include a determination in writing that the proposed use is considered more restricted than the existing nonconforming use, and a copy of the determination will be forwarded to the Planning Commission and City Council.
    b. If the Zoning Administrator determines the proposed use is not more restricted than the existing nonconforming use, then the application for a change to a more restricted nonconforming use will be denied.
    c. In determining whether a proposed use is a more restricted nonconforming use, the following factors, among others, will be considered:
        i. Whether the proposed use will change the size and scope of the existing use of the subject property, and the magnitude of such change; and
        ii. Whether the proposed use will increase the intensity of use of the subject property, including hours of operation, traffic, noise, and similar impacts; and
        iii. Whether the proposed use will have a more or less detrimental effect than the existing nonconforming use upon conforming uses within the surrounding neighborhood; and
        iv. How the total effect of these factors relate to the purpose, policies, and objectives of the Zoning Code.
3. A nonconforming use destroyed by any casualty may be reestablished as it existed immediately prior to such casualty, so long as such use is reestablished within 2 years following the date of destruction.
4. The owner of a valid nonconforming manufactured home not located within a manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that

meets the current HUD manufactured housing code. Any such replacement home will retain the valid nonconforming status of the prior home.

C. Expansions

1. Prior to the approval of any expansion of a nonconforming use, nonconforming status will be verified by the Zoning Administrator.
2. Nonconforming uses may be expanded on an area of a lot not originally devoted to the nonconforming use, provided such expansion meets all current requirements of the Zoning Code applicable only to the expansion. The placement or installation of a solar energy system on a building or lot will not be deemed an expansion of a nonconforming use.
3. Permitted expansions for nonconforming uses that require Special Use Permits are required to obtain Special Use Permits only when such expansions exceed 25% of the gross floor area of the existing structure.

6.3.5. Nonconforming Signs

A. Alteration and Replacement

B. Normal maintenance of a legal nonconforming sign, including changing of copy, nonstructural repairs, and incidental alterations which do not extend or intensify the nonconforming features of the sign, is permitted. However, structural alteration, enlargement, or extension cannot be made to a legal nonconforming sign unless the alteration, enlargement, or extension will result in elimination or reduction of the nonconforming features of the sign.

C. Should any legal nonconforming sign be damaged by any means to an extent of 50% or more of its replacement cost at the time of damage, it cannot be reconstructed except in conformity with the provisions of this Section. In the event damage or destruction of the sign is less than 50% of its replacement cost at that time, the sign may be rebuilt to its original condition and may continue to be displayed.

6.3.6. Nonconformities in Floodplain Overlay Districts

Nonconforming uses and structures within the city's flood hazard protection overlay district may be altered or replaced only in accordance with the provisions of *Sec. XX, Flood Hazard Protection Overlay District*.

DIV. 6.4. ENFORCEMENT

6.4.1. Authority

The Zoning Administrator is authorized to institute any appropriate action or proceeding, at law or in equity, to prevent a violation or attempted violation, to restrain, correct or abate a violation or attempted violation, or to prevent any act which would constitute a violation of this Chapter.

6.4.2. Compliance with Chapter

A. The regulations set forth in this Chapter must be considered the minimum requirements to protect public health, safety, and general welfare, and to provide a remedy for existing conditions that are detrimental thereto.

B. No land, building, or structure can be erected, converted, enlarged, altered, used or occupied, and a building or structure cannot hereafter be located, erected, constructed, reconstructed, altered, repaired or moved except in conformity with the regulations specified within this Code.

6.4.3. Inspections

A. General Inspections

1. The Zoning Administrator will examine premises for which permits have been issued and will make necessary inspections to ensure compliance with the provisions of this Chapter. The Zoning Administrator must, when requested by the City Manager, or when the interest of the City so requires, make investigations in connection with the matters referred to within this Chapter and render written reports on the same.

2. Inspections will be made by the Zoning Administrator or a duly appointed assistant

B. Subdivision Inspections

1. Submittal of a preliminary or final plat by a project developer will constitute consent by the project developer to the City, and any state department or agency, to enter the property at all reasonable times for the purpose of making periodic inspections related to the review of the preliminary and final plat for compliance with this Code and applicable state laws and regulations.

2. The project developer must provide at least 5 days' prior notice to the City when each stage of construction and improvement of the project is ready for inspection.

3. Any inspection of public improvements must be conducted solely to determine compliance with the requirements and specifications provided by law and the approved plat.

6.4.4. Violations

A. General

1. The following persons are hereby declared to be subject to the enforcement provisions of this Division:

a. An owner of property determined to be in violation of this Chapter or of any regulation adopted pursuant to this Chapter found to exist on their property.

b. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates a provision of this Chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building or land in violation of the provisions of this Chapter.

2. The following conduct is hereby declared to be unlawful and subject to the enforcement provisions of this Division:

a. Violation of any provision of this Chapter or of any regulation adopted pursuant to authority conferred by it.

b. Any building erected or improvements constructed contrary to any of the provisions of this Chapter and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Chapter or contrary to any detailed statement, plan, permit, certificate, variance or approval issued under the provisions of this Chapter.

c. Failure to maintain improvements required under the terms of an approval granted under this Chapter in a condition that ensures protection of the public safety and general welfare. It is the purpose of this Section to ensure that those site improvements intended for benefit of the public or protection of adjacent properties, but not dedicated to public use or otherwise transferred to city ownership, are maintained in a condition that permits those intentions to be fulfilled.

d. Failure to maintain or repair a contributing structure or protected property as required by *Sec. XX, Historical Preservation and Architectural Design Control Districts Overlay*.

e. Procurement of any amendment or any required permit, certificate or approval through misrepresentation of any material fact.

f. Initiating any land disturbing activity, or any activity for which a building permit or demolition permit is required, without obtaining all necessary approvals and permits.

g. Upon becoming aware of any violation of any provision of this Chapter, the Zoning Administrator may proceed to remedy the violation as provided in this Division.

B. Notice, Correction Order, and Appeals

1. Except as otherwise specifically provided in this Chapter, the Zoning Administrator may, upon finding that an owner or any other person is or has been engaging in conduct declared unlawful by this Chapter, issue a violation notice or correction order directing such person to stop engaging in such conduct.

2. The issuance of a violation notice or correction order suspends the effect of any approval, permit, plan, variance or certificate previously issued that relates to the property or premises subject to the order until such time as the violation notice or correction order is withdrawn by the Zoning Administrator or is stayed by an appeal to the Board of Zoning Appeals.

3. The Zoning Administrator may, if so specified in the violation notice or correction order, revoke any permit or certificate previously issued by them.

4. Any written notice of a zoning violation or a written order of the Zoning Administrator must include a statement informing the recipient that they may have a right to appeal the notice of a zoning violation or a written order to the Board of Zoning Appeals as provided in *Sec. XX, Variances*, and that the decision is final if not appealed within the applicable time period. The appeal must be taken by filing with the Zoning Administrator, and with the Board of Zoning Appeals, a notice of appeal specifying the grounds thereof.

5. The appeal period for a violation notice and correction order is 30 days except that the appeal period is 10 days for violations involving the following:

   a. Temporary or seasonal commercial uses;

   b. Parking;

   c. Temporary signs;

   d. Occupancy requirements in residential zones; and

   e. Home occupation or office of resident regulations in residential zones.

6. Where a violation notice or correction order is issued and such violation has not ceased within such reasonable time as the Zoning Administrator has specified, the Zoning Administrator must institute such action as may be necessary to terminate the violation. The Zoning Administrator may initiate injunction, mandamus, abatement, criminal or civil warrant, or any other appropriate action to prevent, enjoin, abate or remove such violation of any provision of this Chapter.

C. Criminal Penalties

1. In the event that the Zoning Administrator determines that there has been any violation of this Chapter, the Administrator may seek criminal process against the alleged violator. The issuance of a violation notice and/or correction order cannot be deemed a precondition to the issuance of a warrant or summons pursuant to this section.

2. An owner or any other person convicted of any violation of this Chapter is subject to the following:

   a. A misdemeanor offense punishable by a fine of not less than $10.00 nor more than $1,000.00.

   b. If the violation is uncorrected at the time of conviction, the court must order the person convicted to abate or remedy the violation in compliance with this Chapter within a time period established by the court. Failure to remove or abate such violation within the time period established by the court constitutes a separate misdemeanor offense punishable by a fine of not less than $10.00 nor more than $1,000.00, and any such failure during any succeeding 10 day period constitutes a separate misdemeanor offense for each 10 day period, punishable by a fine of not less than $100.00 nor more than $1,500.00; and any such failure during a succeeding 10 day period will constitute a separate misdemeanor offence for each 10 day period punishable by a fine of not more than $2,000.00.

D. Civil Summons or Ticket

1. An owner or any other person who violates any provision of this Chapter as scheduled in this Section, or permits any such violation, is subject to the civil penalties as scheduled in this Section.

2. The issuance of a violation notice and correction order must not be deemed a precondition to the issuance of a civil summons or ticket pursuant to this section. The Zoning Administrator may cause a

summons or ticket to be issued for any scheduled violation and served upon an owner or any other person responsible for that violation in any other manner of service authorized by law.

3. Such summons or ticket must contain the following information:

   a. The name and address of the alleged violator.

   b. The nature of the violation, the Chapter section being violated and the applicable section of the civil penalty schedule as set forth herein.

   c. The location, date and time that the violation occurred or was observed.

   d. The amount of the civil penalty assessed for the violation.

   e. The manner, location and time in which the civil penalty may be paid to the City.

   f. The right of the recipient of the summons to elect to stand trial for the violation and the date for such trial, or the date for scheduling of such trial by the court.

4. Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the City treasurer prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charged. A signature to an admission of liability must have the same force and effect as a judgment of court. However, such an admission must not be deemed a criminal conviction for any purpose.

5. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation must be tried in the Charlottesville General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability must not be deemed a criminal conviction for any purpose.

6. The designation of a particular violation in the schedule of civil penalties must be in lieu of any criminal penalty under 5.3.4 and, except for any violation resulting in injury to persons, such a designation precludes the prosecution of the particular violation as a criminal misdemeanor, but must not preclude any other remedy available under this Chapter.

7. Each day during which a violation is found to exist is a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a 10 day period, and the total civil penalties from a series of such violations arising from the same set of operative facts must not exceed $5,000.00.

8. The designation of a particular violation in the schedule of civil penalties cannot be construed to allow the imposition of civil penalties:

   a. For activities related to land development;

   b. For violation of any provision of the zoning ordinance relating to the posting of signs on public property or public rights-of-way;

   c. For enforcement of the Uniform Statewide Building Code; or

   d. For violation of an erosion and sediment control ordinance.

9. Any reference herein to a section of this Chapter includes all subsections and paragraphs of that section.

E. Schedule of Civil Penalties

1. Any violation of the following provisions of this Chapter is subject to a civil penalty of $200.00 for the first violation, and a civil penalty of $500.00 for each subsequent violation arising from the same set of operative facts:

    a. The placement, allowance of, erection or maintenance of a material impediment to visibility so as to restrict sight distance in violation of section *Sec. XX, Site Triangle*.

    b. Violation of *Sec. XX, Vehicle Access and Parking*, et seq., regulating parking.

    c. Each use of a lot, including the use of any structure thereon, not authorized either as a matter of right or by special use permit, provisional use permit, or temporary use permit by the zoning regulations applicable to the district in which the lot is located.

    d. Any violation of sections *Sec. XX, Home Occupation, Sec. XX, Outdoor Storage, Sec. XX, Temporary Outdoor Assemblies, Sec. XX, Temporary Outdoor Sales, Sec. XX, Amusement Enterprises, Sec. XX Mobile Food Unit,* establishing supplementary regulations for certain uses authorized in the several zoning districts.

    e. Any violation of the zoning district regulations contained within *Articles 34-2, Zoning Districts*, pertaining to dimensional requirements.

    f. Any violation of any approved proffers, planned unit development plans, special use permits, temporary use permits, variances, development plans, certificates of appropriateness or any condition related thereto.

    g. Any violation of *Sec. XX, Nonconformities*, regulating nonconforming uses, lots and structures.

    h. Violation of *Sec. XX, Signs*, regulating permanent and temporary signs, except as otherwise provided in this division.

    i. Any violation of *Article 34-4, Development Standards*, et seq., regarding improvements required for developments.

    j. Any violation of *Sec. XX, Telecommunication Facilities*, regarding requirements for telecommunications facilities.

2. Any person who demolishes, razes or moves any building or structure which is subject to the regulations set forth within *Sec. XX, Major Historic Review*, without approval of the Board of Architectural Review or City Council, is subject to a civil penalty not to exceed twice the fair market value of the building or structure, as determined by the City real estate tax assessment at the time of the demolition, razing or moving.

    a. For purposes of this Section, the term "person" includes any individual, firm, partnership, association, corporation, company or organization of any kind, which is deemed by the Charlottesville Circuit Court to be responsible for the demolition, or razing.

b. An action seeking the imposition of the penalty must be instituted by petition filed by the City in the Circuit Court of the City of Charlottesville, which must be tried in the same manner as any action at law. It is the burden of the City to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability cannot be a criminal conviction for any purpose.

c. The defendant may, within 21 days after the filing of the petition, file an answer and, without admitting liability, agree to restore the building or structure as it existed prior to demolition. If the restoration is completed within the time agreed upon by the parties or as established by the court, the petition must be dismissed from the court's docket.

d. The filing of the action pursuant to this Section precludes a criminal prosecution for the same offense, except where the demolition, razing or moving has resulted in personal injury.

F. Injunctive Relief, Court Order to Correct and Other Remedies

1. Any violation of this Chapter may be restrained, corrected or abated by injunction or other appropriate relief including, but not limited to, a court order directing a person determined to have engaged in conduct declared unlawful by this Chapter to conform to the requirements of this Chapter or any authorized regulations and to the provisions, requirements, conditions or standards contained in any required plan, permit, certificate, variance or approval issued thereunder.

2. The issuance of a violation notice and correction order must not be deemed a precondition to the initiation of an injunction, mandamus or any other appropriate legal action to restrain, correct or abate a violation under this subsection. Further, commencement of a civil or criminal action under this Division must not be deemed a precondition to, and such actions must not be deemed to preclude the initiation of, an injunction, mandamus or other appropriate action.

6.4.5. Suspension of Time Limits During Litigation

Whenever any provision of this Chapter or of *Chapters 5 or 10* of the City Code imposes a time limit upon the validity of a permit, certificate, variance, development plan, plat or other official approval granted thereunder and the validity of such permit, certificate, variance, development plan, plat or other official approval is raised as an issue in any judicial proceeding to which the City or the recipient of such approval is a party, and such time limitation is reached while the judicial proceeding is pending, then such approval must be extended to a date 12 months beyond the date of a final, nonappealable order by a court of competent jurisdiction terminating the litigation.

6.4.6. Remedies and Penalties

A. The remedies provided for in this Division are cumulative and not exclusive and are in addition to any other remedies provided by law.

B. Any person, whether as principal, agent, employee or otherwise, who violates any provision of this Chapter will be subject to a fine of not more than $500.00 for each lot so divided, transferred or sold. The description of a lot by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring title will not exempt the transaction from the remedies and penalties provided by this Section.

ARTICLE 7.

GENERAL RULES AND DEFINITIONS

Div. 7.1. General Rules 6-80
7.1.1. Project Types 6-80

Div. 7.2. Definitions 7-1

DIV. 7.1. GENERAL RULES

7.1.1. Project Types

A. New Construction or Addition

1. **New Construction.** Any activity that includes the construction of a new building or structure.
2. **Addition.** Any substantial expansion or enlargement of an existing building or structure. Includes activity that increases the floor area or the height of an enclosed space within an existing building.

B. Site Modification

Any substantial modification to a site, including landscaping, trees, fencing, walls, lighting, grading, flatwork, and parking lots including resurfacing and restriping of existing parking lots.

C. Facade Modification

Any substantial change to the exterior envelope of a building. Includes changes to any of the following: the facade of a building; the amount of exterior foundation wall that is exposed above finished grade; or an architectural element (including a balcony, porch or deck) attached to a facade. Includes any change to a facade that goes beyond the definition of maintenance and repair.

D. Change of Use

A change in use or a modification of an area designed and intended for a specific use from the previously approved use. Includes a change in the principal use of any portion of a building, site or lot from one of the uses specified in 19-3, Use Regulations to another. Includes the expansion of floor area, site area or lot area dedicated to a use or an increase in the intensity of a use, such as an increase in seating capacity or the number of persons in care.

E. Renovation

Modification of the interior of any building or structure that does not expand the building or structure, but includes more than 50% of the floor area of any story of the structure. Does not include interior modifications to meet fire, life safety, and handicapped requirements, regardless of the amount of floor area included. Includes any change that goes beyond the definition of maintenance and repair.

F. Maintenance and Repair

Activity done to correct the deterioration, decay of, or damage to, any part of a building, structure, or lot, that does not involve a change or modification of the existing design, outward appearance or applicable zoning requirements. In-kind replacement of deteriorated or damaged parts of a building is considered maintenance and repair. Maintenance and repair includes repair of site components such as parking lots or landscaping.

DIV. 7.2. DEFINITIONS